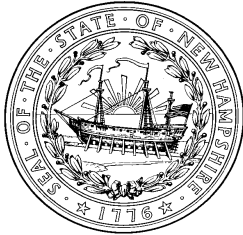


## HEALTH SERVICES PLANNING AND REVIEW



August 2, 2007

9:30 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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<b>Meeting called by:</b>	Chair Nicholas Vailas	<b>Note Taker:</b> HSPR Staff
<b>Type of meeting:</b>	Certificate of Need - Board Meeting	
<b>Attendees:</b>	Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz	
<b>Excused:</b>	Ms. Beth Ann Roberts	
<b>Staff Members:</b>	Ms. Cindy Carrier, Ms. Lauren LeBrun, Ms. Angel McFetridge and Mr. Jeffery Peck	

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Chair Vailas opened the meeting at 9:36 a.m.

### 1. Consent Agenda

- ☐ Approve June 21, 2007 Board Meeting Minutes
- ☐ Minglewood, NSR Request for open MRI unit, Lebanon, NH - \$572,773
- ☐ Dr. O'Connell's PainCare Centers, Inc., NSR Request for Additional Procedure Room, Somersworth, NH - \$646,609
- ☐ Indian Stream Health Center, Inc., NSR Request for New Licensing Designation, Colebrook, NH - \$0

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if the consent agenda items required any further discussion. If so, they would require removal from the consent agenda.

Mr. Peck gave a brief overview of the consent agenda. Ms. Wheeler then made a motion to remove Indian Stream Health Center from the consent agenda and Ms. Almeda seconded the motion. All Board members voted in favor of the motion and Indian Stream Health Center was removed from the consent agenda. At this point, Ms. Almeda made a motion to approve the consent agenda items without Indian Stream Health Center. Ms. Crory seconded the motion. All Board members voted in favor of the motion and the consent agenda without Indian Stream Health Center was unanimously approved.

❑ **Indian Stream Health Center, Inc., NSR Request for New Licensing Designation, Colebrook, NH - \$0**

Ms. Wheeler stated that she didn't object to the NSR request by Indian Stream Health Center but that she was curious as to why they were switching their licensing designation. There were no representatives present from Indian Stream Health Center to answer Ms. Wheeler's question. At this time, Chair Vailas recognized a motion made by Ms. Wheeler to accept the NSR request made by Indian Stream Health Center, Inc. Ms. Almeda seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**2. Dover MRI, LLC – NSR Request for outpatient fixed MRI Services in Somersworth, NH - \$385,000**

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that Dover MRI, LLC, requests an NSR determination for the establishment of fixed MRI service at an existing medical office building in Somersworth, NH. He stated that the members of the entity are Wentworth-Douglass Hospital and Seacoast Orthopedics and Sports Medicine, and that Mobile MRI services are already being delivered to the facility but will be replaced by a unit and van to be permanently placed on the existing pad. Mr. Peck added that the total estimated cost for the MRI unit and van is \$385,000 as per a quote attached to the petition. He concluded that because the petitioner has not yet acquired the MRI unit, HSPR staff recommends that a condition be added to the NSR, if granted, that Dover MRI supply to the Board an invoice for the unit identifying the total equipment cost not to exceed \$400,000 prior to unit operation, in accordance with RSA 151-C:5, II (d) and He-Hea 301.01 (m)(1).

At this time, Mr. Craig Whitney, Vice President of Wentworth-Douglass Hospital and Attorney John Malmberg came forward to testify. Attorney Malmberg stated that he agreed with the staff's introduction and would accept the NSR condition as recommended. Chair Vailas questioned the timing of the request as it appeared that not all the cost numbers for the project were available. Mr. Whitney replied that a quote had been received and included with the request.

Hearing no further discussion Chair Vailas recognized a motion made by Ms. Griffin that Dover MRI, LLC is not subject to review. Ms. Crory added that the motion should include the condition that Dover MRI supply the Board an invoice for the unit identifying the total equipment cost. Ms. Griffin accepted the condition into the motion. Ms. Crory then seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**3. Approve Initial Proposal of He-Hea 100, Board Organizational rule amendments**

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck referred to the enclosed copy of rule He-Hea 100, Board organizational rules, amended as shown. He stated that these rules have been reviewed by the Board's Practice and Procedure subcommittee and changes have been made. He added that this rule is now ready to enter the rulemaking process, and requires an approval of the full Board to do so. He then stated that a public hearing on the rule will likely occur at the September 20, 2007 Board meeting. He concluded that these Organizational rules are considered a separate filing with JLCAR, and have no expiration date.

Dr. Sochalski then motioned to approve Initial Proposal of He-Hea 100, Board Organizational rule amendments. Ms. Griffin seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**4. Approve Initial Proposal of He-Hea 200-300, Practice and Procedures rule re-adoption**

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that at this time the Board could approve the Initial Proposal of the He-Hea 200-300 Practice and Procedures rule. He stated that this rule is slated to expire on November 19, 2007 and due to rulemaking requirements, it will not be possible to adopt a new 8-year rule before the current rules expire; therefore, these rules are being re-adopted in their current form while the Practice and Procedures subcommittee works on amendments. Mr. Peck added that this process is similar to that of the acute care rules (He-Hea 1000), which encountered the same issue with regard to expiring rules and needed amendments.

Hearing no discussion, Chair Vailas recognized a motion from Mr. Stanton to approve the Initial Proposal of He-Hea 200-300, Practice and Procedures rule re-adoption. Ms. Wheeler seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

**5. Approve Initial Proposal of He-Hea 2100, Long-Term Acute Care Hospital Rule**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that a subcommittee of the Board was established last fall to develop rules for the regulation of Long-Term Acute Care Hospitals (LTACH). She added that this subcommittee, led by Board member Wojtkiewicz, now presents an Initial Proposal of the rule for Board approval to enter into the rulemaking process. She finished by stating upon approval of this initial proposal a public hearing on the rule can then occur at the September 20, 2007 Board meeting.

Ms. Almeda asked if the approval of the initial proposal allows the Board to advance to a public hearing. Ms. Carrier replied yes. With no further discussion, Mr. Wojtkiewicz motioned to approve the initial proposal of He-Hea 2100, Long-Term Acute Care Hospital rule. Ms. Almeda seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

**6. Request to Extend Formal Review of Nursing Home and Rehabilitation applications (30 Days)**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that HSPR staff respectfully requests that the Board extend the formal review period for the 3 nursing home applications and 1 rehabilitation application by 30 calendar days, pursuant to RSA 151-C:8, VIII and He-Hea 301.10 (a)(2): "The staff's workload precludes the preparation of staff memoranda or data in time to allow the Board and parties an opportunity to review or contest such memoranda or data prior to the scheduled proceeding." She added that because the Board had adjusted its August meeting from 8/16/07 to 8/2/07, time has been shortened for staff to complete its analysis of these applications. She stated that the 90-day formal review period for the applications ends on September 4, 2007 (rehabilitation) and September 11, 2007 (nursing homes). She concluded that extending the period by 30 days to October 4/October 11 will allow the public hearings to be held at the Board's scheduled September 20, 2007 meeting.

Ms. Wheeler then motioned to extend formal review of the Nursing Home and Rehabilitation applications. Ms. Griffin seconded the motion and all Board members voted in favor of the motion passing it unanimously.

**7. Elliot Health System and 40 Buttrick Road, LLC – NSR Petition for Phase I Medical Office Building and Phase II Laboratory , Londonderry, NH**

**Discussion:** Chair Vailas recused himself from this agenda item. Ms. Wheeler nominated Ms. Crory to chair this agenda item as Vice Chair Roberts wasn't present. Dr. Sochalski seconded the motion. All remaining Board members unanimously voted in favor of Ms. Crory as Chair for this agenda item.

At this time, Ms. Griffin made a motion to table the Intervenor request until hearing the presentation of the petition. Ms. Wheeler seconded her motion. Attorney Malmberg representing the Intervenor, voiced that he felt it was fairer to know if they have party status. Mr. Stanton, Ms. Almeda and Mr. Wojtkiewicz voted against the motion. With a vote of 5 to 3 in favor, the motion tabling the Intervenor status was approved.

At this time, Attorney Don Crandlemire, General Counsel for Elliot Health System, Mr. Douglas Dean, President and CEO of Elliot and Mr. Rick Elwell, Sr. Vice President and CFO came forward to testify on behalf of the Elliot NSR request. Attorney Crandlemire provided some background on the project. He stated that Phase I is 44,000 square feet and Phase II had previously received an NSR. Elliot is now requesting an NSR for lab space as part of Phase II and an NSR for the sale and lease of Phase I. He stated that Elliot has also planned to sell Phase I at fair market value and recover 100% of the capital expenditure. He showed floor plans for both Phase I and II and stated that they have independent utilities. Ms. Crory asked if Phase I and II have been built. Attorney Crandlemire answered that yes, they are, but Elliot is only selling Phase I; Phase II already has an NSR except for lab space. Ms. Crory asked the total cost of Phase I after the sale of the building. Attorney Crandlemire replied that Elliot spent \$11,600,000 and is selling it for \$11,800,000; and that the building includes a CT scanner and MRI, services which was already approved. He added that physical therapy space is no longer included; this space will now be used for doctor's offices. Mr. Wojtkiewicz stated that he thinks that selling is an "end run" around the CON process and that the purchaser should now get a CON. Attorney Crandlemire replied that it wasn't, that it was a fair market lease and the buyer is only a landlord. He stated that a CON was previously required because the capital was at risk; now there is no capital at risk and there is nothing in the statute that prevents Elliot from reconfiguring the project. Mr. Dean stated that all the capital is regained and this will strengthen Elliot's financial position on the balance sheet. Ms. Wheeler asked if the statute requires the Board to regulate the lessor. Attorney Crandlemire replied not if it is an arms length lease. This then concluded Elliot's presentation of this request.

Attorney John Malmberg representing Catholic Medical Center, Parkland Medical Center and Derry Medical Center (the Intervenor) then came forward to testify. He stated that at the 3/15/07 Board meeting, based on the Attorney General's opinion, the Board voted 8 to 0 that the building required a CON. He went on to say that nothing has changed; the project has been developed, the statute was violated and that Elliot can't cure the violation by going back and changing financial arrangements. He stated that Elliot said they had a CON prepared and ready to file and the Board said to wait for the 8/1/07 RFA. Further, the NH Legislature offered Elliot no relief from the process. He added that Elliot is only doing this to circumvent the CON process and the statute. He also stated that if the Board grants this petition, anyone could do anything regarding health facility construction and sell the property if questioned regarding CON. Attorney Malmberg brought up transfer of ownership, saying that at the March Board meeting, the Board declared this is a health care facility and that it still will be upon sale to the buyer. Ms. Crory stated that the Board has had many requests for business plans that are financially feasible and that this is a new petition by Elliot Hospital that will allow them to operate the facility in a financially feasible manner. Attorney Malmberg commented that Elliot has already spent the money and built the building and

did this without a CON, which violates the statute. Ms. Crory stated the Board has approved other similar projects. Attorney Malmberg replied that in no past cases has the hospital already spent the money and built the building without a CON.

At this time, Elliot came back to the table to respond. Attorney Crandlemire stated that this process hasn't been pleasant for Elliot and he believes the only reason to deny the petition is to punish Elliot. He added that Elliot is here with the best of intentions. Ms. Crory referenced the 9/15/05 Board meeting minutes and referred to Elliot's letter informing the Board that it would submit any further information needed. Attorney Crandlemire stated that they are not operating anything that isn't licensed and that after the sale they would be in compliance with the law. Ms. Crory asked if they were presenting a new petition showing the project cost is under the threshold. Mr. Crandlemire replied that they were.

Attorney Malmberg returned to the table at this time. He stated that the use of the facility isn't going to change and the Board previously voted 8 to 0 that it required a CON. He suggested that the Board talk to the Attorney General's office again as this is a very important decision for the Board. Dr. Sochalski asked what makes this project different from the Derry Medical Center (DMC) that was approved by the Board a few years ago. Attorney Malmberg replied that DMC isn't owned by a hospital, and that the Londonderry facility was built by a hospital. Dr. Sochalski stated that this building won't be owned by a hospital either. Attorney Malmberg replied that it was and is now owned by Elliot. Dr. Sochalski asked Attorney Malmberg if he was privy to information from the meeting with the Attorney General. Attorney Malmberg replied that he wasn't. Dr. Sochalski stated that he recollected that the Attorney General stated that there were ways for Elliot to avoid a CON for this project.

Attorney Crandlemire stated that this is not a health care facility; he referenced He-Hea 1201.01 and stated that the transfer does not constitute 50% of Elliot's assets. This then concluded the presentation on this agenda item.

At this time, Ms. Almeda made a motion to take the petition to intervene off the table. Mr. Chase seconded the motion. Ms. Wheeler opposed the motion; the remaining 7 Board members voted in favor and the motion passed.

At this time, Attorney Malmberg came forward to testify. He stated that these 3 parties have a strong interest in this issue and there is no reason to not grant intervenor status. Ms. Crory asked Attorney Malmberg to explain page 1 of his petition where it states "existing violation of CON statute." Attorney Malmberg answered that Elliot developed a health care facility without a CON which violates RSA 151-C:4, I. Ms. Wheeler asked if intervenor status is granted what is gained by the parties. Attorney Malmberg replied that he could request reconsideration and/or go to the Supreme Court if dissatisfied with the Board's decision. Ms. Crory stated that intervenor status can include conditions and referenced He-Hea 208.07.

Attorney Crandlemire came forward at this time and stated that Elliot's position is not to object to granting intervenor status and stated that CMC, one of the Intervenor, has no presence in Londonderry. He added that he believes that CMC dislikes Elliot and only seeks to harm Elliot.

At this time, Ms. Wheeler made a motion to deny intervenor status to CMC, PMC and DMC. Ms. Griffin seconded the motion. Board discussion ensued regarding intervenor status. Ms. Wheeler stated that she can't see any reason to grant intervenor status because nothing new has been learned and stated that it is a delaying tactic. Mr. Wojtkiewicz stated that granting intervenor status does not delay the decision today, it just gives them more rights. Ms. Almeda stated that she tends

to err on the side of granting intervenor status to preserve rights. Ms. Wheeler stated that they have had ample time to state their position and it has not changed. Ms. Crory added that the petition has language changing what the true record is. Hearing no further discussion, Ms. Crory called for a vote of the Board. The motion to deny intervenor status failed with a split vote of 4 to 4 with Ms. Almeda, Mr. Chase, Mr. Stanton and Mr. Wojtkiewicz voting to grant and Ms. Crory, Ms. Griffin, Dr. Sochalski and Ms. Wheeler voting against granting. A motion was then made by Mr. Wojtkiewicz to grant CMC, PMC and DMC intervenor status. Mr. Chase seconded the motion. That motion passed with 5 members (Ms. Almeda, Mr. Chase, Ms. Crory, Mr. Stanton and Mr. Wojtkiewicz) in favor and 3 (Ms. Griffin, Dr. Sochalski and Ms. Wheeler) opposed.

Board discussion then ensued regarding Elliot's NSR request. Mr. Wojtkiewicz voiced his concern that this was an end run around the Board's previous ruling and if the Board approves the NSR then everyone will want to do this. Ms. Crory stated that this is a new petition. Mr. Wojtkiewicz replied that it is not a new proposal. Ms. Almeda brought up the fact that the CON requirement was for Elliot and not the facility. She added that this is a restructuring of the original project to be in line with past precedent and that Elliot will no longer hold the capital asset. Mr. Chase stated that he wouldn't characterize it as an end run but cannot vote to support it yet. He stated that perhaps the Board should check with the Attorney General's office and that he is concerned with the future. Ms. Wheeler stated that she agrees with Ms. Crory that this is a new project and doesn't think the AG's office would shed any new light on this; and there is nothing in the statute preventing this type of arrangement. Mr. Wojtkiewicz asked who in the past has done this type of arrangement. Ms. Almeda referenced the Horseshoe Pond project and stated that the building is not owned by Concord Hospital; it is owned by Donal Associates. Mr. Wojtkiewicz asked whether discussions were done prior to the building being built or after. Ms. Almeda stated that she wasn't involved in the early discussions. Ms. Carrier stated that the Practice and Procedure subcommittee is discussing the lease issue.

Hearing no further discussion, Ms. Crory recognized a motion made by Ms. Wheeler to approve the NSR request as proposed by Elliot Health Systems with 3 conditions recommended by the staff:

- (1) That Petitioners provide a signed, dated and notarized copy of the Condominium Declaration and Bylaws (Exhibit B) prior to licensure and operation of the Phase I services;
- (2) That Petitioners provide a signed appraisal (Exhibit D) prior to licensure and operation of the Phase I services; and
- (3) That Petitioners provide a signed and dated Lease Agreement (Exhibit E) prior to licensure and operation of the Phase I services.

Dr. Sochalski seconded the motion. Ms. Almeda added that Phase II laboratory space should be included in the motion. Ms. Wheeler accepted this change. On a vote of 8 to 2 in favor, the motion passed with Mr. Chase and Mr. Wojtkiewicz opposing the motion.

**8. Other Administrative Business**

- ☐ The Acute Care Subcommittee is meeting directly after the Board meeting.
- ☐ Ms. Carrier stated that HB723 has extended the moratorium to 2009. She stated that this exempts the 4 applications under formal review but no more applications can be accepted.
- ☐ Ms. Carrier stated that Concord Hospital has submitted a copy of the FDA approval of its fixed MRI unit to satisfy the condition placed on CON MRI 00-05 (amended).
- ☐ Mr. Chase was appointed to be the Presiding Officer for the Pre-Conference Hearing required for the 2 applicants participating in the Region 3 Nursing Home RFA. It was decided that HSPR staff would contact all parties for a date for the conference.
- ☐ Ms. Carrier stated that HSPR staff requests that the Practice and Procedure Subcommittee set a next meeting date to discuss the NSR process. It was decided that staff would contact members of the subcommittee for a date to meet.
- ☐ Ms. Carrier stated that copies of the recently adopted He-Hea 900 and He-Hea 1000 rules are enclosed and asked that Board members replace their outdated copies.
- ☐ Ms. Carrier stated that the next meeting of the Board would take place on September 20, 2007.
- ☐ Chair Vailas added that Ms. Wheeler volunteered to serve on the SB 114 study committee as well as the HB 727 study committee. All Board members approved of this.

Chair Vailas then adjourned the meeting at 11:50.

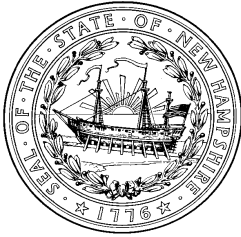
Signature:

\_\_\_\_\_  
Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



September 20, 2007

9:30 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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**Meeting called by:** Chair Nicholas Vailas      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Ms. Beth Ann Roberts, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz

**Staff Members:** Ms. Cindy Carrier, Ms. Lauren LeBrun, Ms. Angel McFetridge and Mr. Jeffery Peck

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Chair Vailas opened the meeting at 9:30 a.m.

### 1. Consent Agenda

#### ☐ Approve August 2, 2007 Board Meeting Minutes

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if the consent agenda item required any further discussion. If so, it would require removal from the consent agenda.

Ms. Almeda made a motion to accept the consent agenda. Mr. Wojtkiewicz seconded the motion. Ms. Roberts didn't vote, as she hadn't attended the August Board meeting. All remaining Board members voted in favor and the consent agenda was unanimously approved.

### 2. Determine Issuance of October 1, 2007 RFA – Ambulatory Surgical Facilities

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the RFA for Ambulatory Surgical Centers (ASC) is due to be issued. He stated that in order to support a finding of need for the issuance of this RFA, HSPR staff requested that any existing ASC or acute care hospital submit a brief letter of intent. He stated that in response to this request, Elliot Hospital submitted a letter of intent and that based on that letter, HSPR staff recommends the issuance of the ASC RFA effective October 1, 2007.



Ms. Almeda made a motion to issue the ASC RFA based on the letter of intent from Elliot. Ms. Roberts seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**3. Public Hearing for Region 3 Long Term Care RFA (33 beds): Golden View Health Care, LTC 07-01, \$933,967.40; Laconia Center Genesis Healthcare, LTC 07-03, \$6,500,000**

**Discussion:** Mr. Wojtkiewicz recused himself from this agenda item. Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier gave a brief overview of the proposed projects. She stated that at this time the Board will hear the competing applications proposed by Golden View Healthcare and Laconia Center Genesis Healthcare for long term care beds in Region 3. She stated the applicants would be making presentations before the Board in accordance with the prehearing order. Chair Vailas stated for the audience that these applicants are competing for the 33 available nursing beds. Chair Vailas then opened the public hearing for Golden View at 9:36 a.m.

Ms. Jeanne Sanders, Administrator of Golden View, Ms. Rosemary Simino, Assistant Administrator, Dr. Craig Markert, Medical Director at Golden View, Ms. Susan Palmer-Terry, CON Consultant, Mr. Neil Castaldo, Esquire and Mr. Andrew Eills, Esquire, Legal Counsel for Golden View came forward to testify. Ms. Sanders started off by giving an overview of the Golden View project. She stated that Golden View's existing assisted living beds were built to nursing home standards and that Golden View is centrally located in the region and best serves towns in the northern part of the region. She then spoke regarding the Genesis filing regarding the senior facility (Meredith Bay Colony). She stated that the project is in the planning stage and Golden View had hoped to undertake this project, but conditions of the bonds prohibited them from doing so, and a separate organization will be doing this. Ms. Sanders stated that Genesis' argument regarding the financial impact of the Golden View project on Medicaid included a calculation not consistent with historical census. She handed out an illustration of the effect on the Medicaid rate. Chair Vailas asked Ms. Sanders whether she'd entertain the idea of splitting the beds with Genesis. She replied that they've had a few conversations on this but believes it is not in the best interest to do this. Ms. Wheeler stated that the statute states that a request to split would have had to been filed before the moratorium was put in place. Attorney Eills stated that RSA 151-C:8, XII requires applicants to file amendments to the application within 45 days of formal review. He then stated that at this point Golden View does not want to separate beds and wants to go forward as it stands. He went on to say that the Board does not have the information on costs, construction and other changes to the application that would support a lesser amount of beds. Ms. Sanders related a conversation prior to the 7/9/07 letter from Mr. Arthur O'Leary of Genesis, during which he had said he had been speaking to other people about putting 10 beds at Franklin and leasing them from LRGH. She stated that the Franklin beds were outside of CON and that she was told Genesis would sue if they didn't get the beds. Ms. Sanders closed by saying that she felt Golden View had a good application and that they met all of the criteria and that the project will enhance care for its residents.

Ms. Simino testified at this time. She stated that Golden View is well regarded by its peers and has a clean reputation for quality of care as well as quality of life. She stated that in 1989 Golden View led the national movement for reducing restraints and that in the 1990's they developed a unit for memory impairment with a separate dining room. She also related that Golden View has developed wellness programs for residents and that there are five indoor dining rooms and an outside dining room. Ms. Simino presented for the Board pictures of residents and community events. She stated that staff has the leadership to fulfill individual requests without going through a

corporate structure. She closed by saying that there's a garden for residents to grow vegetables and then cook them with help from the staff.

Dr. Craig Markert testified at this time. He stated that he is a Board member of Metro Health. He gave some basic background on himself stating that he came to NH in 1977 and joined the Laconia Clinic, is Medical Director for Belknap County Nursing Home and that he has provided care there for over 10 years. He went on to say that Golden View is a remarkable facility, the project is very cost effective, and the facility is very well run. He added that the staff has an incredible amount of expertise, and they provide great care at a remarkable price. He stated that responding to the RFA would help the financial feasibility of the facility. He also stated that Golden View would keep private rates low to keep services as affordable as possible.

At this time Board questions ensued. Ms. Almeda asked Ms. Sanders if converting 23 assisted living beds would leave Golden View with any assisted living beds. Ms. Sanders replied that it would, but there are 60 other beds available in Meredith and 60 in Laconia. Ms. Almeda then asked if the current assisted living beds were occupied. Ms. Sanders replied yes and that assisted living residents will be placed on an individual basis. Ms. Almeda asked the current occupancy rate. Ms. Sanders replied that it was either 103 or 104 residents. This then concluded Golden View's presentation to the Board.

At this time, representing Genesis were Ms. Lucy Hodder, Esquire and Ms. Barbara Greenwood, Esquire, Legal Counsel for Laconia Center, Genesis Healthcare, Mr. John Allard, Administrator, Mr. Tom Farnan, Regional Director of Reimbursement, Mr. John Weaver, De Giorgio Associates, Mr. Arthur O'Leary, Regional Director of Operations for Genesis and Ms. Lynda Goldthwaite, Manager of Clinical Operations. Attorney Hodder asked for more rebuttal time due to the recent information received on Medicaid from the Department of Health and Human Services (DHHS). Chair Vailas granted time to both entities. Mr. Allard began by stating that he had been in the nursing home business since 1979 and that Laconia Center didn't just apply for beds to increase profits; the design doesn't include just beds, there will be additional space to enhance care. He stated that although the Staff Analysis indicates that the Genesis project is 6 times higher in cost than Golden View, there's less impact on the Medicaid system and it would bring 34 additional jobs in the Laconia area. He stated that they had tried to collaborate with Golden View to split the beds, and that he had spoken with Ms. Jeanne Sanders in March before the applications were submitted. He closed by saying that he would consider a provision to split beds.

Mr. Tom Farnan provided a handout to the Board. He spoke regarding affordability and stated that Golden View didn't include the original construction cost of an earlier addition to the facility and that the cost reports will include the cost of the current 22 assisted living beds. He stated that Laconia Center would not be borrowing any money, the project will be financed via its corporate owner. He added that Golden View is indebted for 10 million dollars based upon a review of its financial reports and that could raise costs. Mr. Farnan suggested the Board ask questions. He stated that Golden View was a for-profit operation until 1999.

Ms. Crory asked how much the interest component would be on the project. Mr. Farnan replied that there is no interest component. Ms. Crory stated that she's surprised the parent company doesn't have an allocation system. Chair Vailas directed Ms. Crory's question to the DHHS Medicaid representative. Mr. Jonathan McCosh answered that the private rate is 20% over the state average. Mr. Allard responded that they don't do comparisons. Ms. Hodder stated that it is addressed in Exhibit 2 of a prior submission made by Genesis.

Mr. John Weaver from De Giorgio Associates stated that the space is being increased but not only for beds. He stated that there was a disagreement in cost, that Marshall Valuation Service with a Class A for Laconia will be \$220 per square foot and Golden View is \$161 per square foot. He added that Golden View stated they used a class B average but actually used a class D. He stated that there's a difference in quality. He closed by stating that Genesis plans to start the project in July 2007.

Ms. Lynda Goldthwaite, Manager of Clinical Operations spoke at this time. She stated that she has, does and will work closely with the team to change the way residents are cared for. She stated that the facility needs an improved environment to give quality care.

Board questions ensued at this time. Chair Vailas asked if Laconia Center paid taxes to the Town of Laconia as they are for profit. Mr. Allard replied that yes they did. Chair Vailas also asked if taxes would increase with this project. Mr. Allard replied that he assumed they would. Chair Vailas asked if an amendment would be a hardship. Mr. Allard answered no. Attorney Hodder stated that the Board had the authority to condition CONs to split beds. Ms. Roberts stated that the Board has information on Laconia regarding splitting the beds but questioned whether there was information for Golden View. Attorney Hodder replied that the Board could place a condition on the CON to collect this. Ms. Crory asked Attorney Hodder to clarify why Attorney Eills' written statement on splitting beds is incorrect. Attorney Hodder stated that He-Hea 214.01 says the Board can vote to approve with any conditions; conditions can include the total project amount and the Board could split the beds. Attorney Hodder stated that if Golden View received only some beds they would likely not build the addition.

Ms. Pat Milton from the audience stated that her mother is a resident at Laconia Center, Genesis and she feels they are a great facility.

Mr. Jonathan McCosh, Supervisor of the Nursing Home Rate Setting unit of the Bureau of Elderly and Adult Services came forward to testify at this time. Chair Vailas asked whether debt would be issued. Mr. McCosh replied that he assumed debt would be issued and that capital includes depreciation and interest. He stated that Golden View didn't factor in the cost of the original building and he didn't know the depreciated value of the building. Chair Vailas asked if either project was out of line. Mr. McCosh suggested the Board put restrictions on the CONs to guarantee no debt will be issued. Ms. Roberts questioned the staff costs being re-deployed and whether they need to be added. Mr. McCosh stated the Department would use the Medicaid cost reports for the nursing homes. Ms. Roberts asked about energy costs and Chair Vailas stated that they are equal.

At this time public testimony was received from the audience.

- Ms. Carolyn Schoenbauer stated that she has been an employee at Golden View for 25 years. She expressed her support of Golden View stating that they are very team dedicated, high quality and that they have a strong community belief.
- Dr. Dana Merrifield was next to provide testimony. He stated that he has worked for both Golden View and Laconia Center and is currently the Medical Director at Laconia Center. He stated that both have excellent administration and medical staff. He stated that the difference is in the physical plant; Golden View has an excellent plant, Laconia does not have a good physical plant. He stated that if Laconia Center receives a CON, the overall facility would be improved. Ms. Crory questioned the changing marketplace

regarding assisted living beds in the Laconia area. Mr. Merrifield answered that the state doesn't pay enough for assisted living beds.

- Mr. Richard Mansur came forward and stated that he had been rehabbed from a hip replacement at Golden View and that his mother-in-law was a resident there. He stated that he was able to choose the floor he stayed on and that he was impressed with the staff. He closed by saying there must be a reason why the staff stays.
- Ms. Ethel Mykland came forward to express her support for Golden View. She briefly stated that she has been there for 2 years, is blind, and that Golden View is a wonderful place to be; the care is excellent.

Chair Vailas closed the public testimony at 11:37 a.m. and called for a 10-minute break at this time as well.

At 11:52 a.m. Chair Vailas called the meeting back to order and Golden View came forward for rebuttal. Ms. Jeanne Sanders and Mr. Bill Gady, Accountant for Golden View presented. Ms. Sanders spoke regarding the Medicaid program. She stated that Genesis had included MQIP and that she has also done this. She stated that the capital component of \$7.51 calculated by Golden View includes the cost of the inn, all depreciation and interest, and depreciation on the new building. She stated that she expects the Medicaid percentage to remain the same and that the financials assumed the lowest payor to be conservative. She stated that interest decreases over time, some bonds will drop off, there's no borrowing and that she assumes census will stay the same. She added that quality is important too, that Genesis was built in 1966 and expanded in 1982, and that Golden View was built in 1974 and that the building has been kept up. She added that Genesis had 15 deficiencies in 2006, some were repeats (i.e., smoke detectors, doors that didn't close) and that they didn't submit a proper QA plan. Attorney Eills commented on splitting of the beds. He stated that there isn't enough information to allocate the beds between the two facilities at this time. He stated that the Board does have the ability to put conditions on a CON but these would require a major revision to the applications. The Board must review the applications under RSA 151-C:9, II and determine which is more cost effective, higher quality and more affordable. Ms. Wheeler stated that Laconia Center said that Golden View's plans did not have toilets and their doors are the wrong size. Ms. Palmer-Terry responded that there are toilets in each room and that the doors are the proper size per ADA. Ms. Wheeler asked why when Golden View was approached in March regarding splitting the beds why they didn't accept. Ms. Sanders clarified that she had called John Allard to see if he had information on HB723 and to question whether the Franklin beds should be included in the CON; Mr. Allard mentioned collaboration, and stated he only needed 10 beds. She stated that she asked her lawyers and consultants and decided that Golden View's 33-bed model is the most cost-effective and would be less effective at 23 beds. Board questions ensued regarding splitting the beds. Golden View stated that they couldn't commit to consideration of splitting the beds. Ms. Crory asked if Golden View felt the Board should be considering competing applications in relation to each other. Ms. Sanders stated that she agreed the Board should do this and that she feels that Golden View had the better application.

At 12:20 p.m. Chair Vailas invited Laconia Center, Genesis back to the table for rebuttal. Mr. Farnan stated that the capital component is close between the two projects. Attorney Hodder stated that the purpose of the statute is to promote rational allocation of health care and questioned why the Board would not allow a split of the beds. She stated that Golden View is an affiliate of the proposed \$18 million senior living facility and that Laconia Center is in the core of the Laconia Community. Ms. Wheeler stated that much of the project is to improve quality of life and

asked if there's been investment in the plant over the years. Mr. O'Leary stated that the facility has been recarpeted, wallpapered, new beds, TV's, new air conditioners, etc. Mr. O'Leary stated that the typical nursing home is around 120 – 130 beds and they would work better with more. Ms. Crory referenced Attorney Hodder's comment that if Laconia Center is in need of repair, and if the Board doesn't grant a CON it would be depriving Genesis. She then asked why improvements haven't kept pace over the years. Attorney Hodder replied that there is a limit to what can be done under the threshold. Ms. Crory stated the Board needs to consider the effect on the health care system and asked why the Genesis \$6.5 million project is better. Attorney Hodder replied that there's no interest and no loan and the cost won't be passed onto Medicaid. Ms. Crory asked the impact on the Laconia/Meredith area and which project is more cost effective. Attorney Hodder replied that Laconia Genesis would be, in terms of care. Ms. Griffin stated that dividing beds has been done before and asked when and how were they split. Ms. Palmer-Terry responded that there were 100 beds and one applicant wanted 30 and the other applicant took the 70 remaining beds. Ms. Griffin stated that it wasn't done the day of the hearing. Ms. Palmer-Terry stated that it hadn't, they had to re-file for the 70 beds. Chair Vailas asked how many Medicaid clients were in the census today at both facilities. Mr. Allard replied that there were 71 and Ms. Sanders responded that they had 61.

Chair Vailas then closed the public hearing at 12:40 p.m. and opened Board discussion. Ms. Wheeler stated that she didn't feel that division is the best option. Mr. Chase stated that there's been much discussion on cost and that it's hard to do a project under the cap. He added that Laconia is trying to deal with issues in the facility; if Golden View gets the CON, at some point Genesis will have to do renovations. Ms. Roberts asked if it were feasible to do some split. Mr. Chase stated potentially but couldn't say yes or no. Chair Vailas stated that it would be a rational allocation of healthcare resources and the Board should get providers to collaborate. Ms. Crory questioned the deadline. Ms. Carrier stated that it is October 11, 2007, which includes the 30-day extension. Ms. Crory stated that the Board hasn't been able to grant any new nursing home beds for many years and if they don't they'll be lost; and the Board shouldn't interfere with the business plan of each institution. She added that Golden View had an array of support for the project right in the application. Ms. Almeda stated that she preferred to see collaboration to solve access problems and stated that RSA 151-C:1, III speaks to collaboration as a means to manage costs; yet there's no data to show collaboration will manage costs. Ms. Griffin asked if a decision was made today, and the other applicant appeals, does the October 11<sup>th</sup> date still hold. Ms. Carrier stated that no it didn't, the aggrieved party could ask for reconsideration but the 10/11 date goes away. Ms. Wheeler stated that each party has a different reason for wanting beds; Golden View is asking for 33 beds because it is most cost effective and they have a reason for needing that number.

Hearing no further discussion, Chair Vailas recognized a motion made by Ms. Wheeler to issue the 33 beds in Region 3 for Long Term Care to Golden View Health Care. The motion was seconded by Ms. Griffin. The motion passed with a vote of 7 to 2 with Chair Vailas and Mr. Stanton voting against the motion.

Mr. Wojtkiewicz re-joined the meeting at this time.

At 1:00 p.m. Chair Vailas called for a short lunch break. At 1:22 p.m. he called the meeting back to order and stated that the Board would need to postpone items 6 – 10 on the agenda and the Seacoast Physical Rehabilitation application would be the last item of the day.

**4. Public Hearing Region 5 Long Term Care RFA (33 beds): SunBridge Clipper Home of Wolfeboro, LTC 07-02, \$10,000**

**Discussion:** At this time, Chair Vailas opened the public hearing for SunBridge Clipper Home of Wolfeboro. Ms. Luann Rogers, Regional Vice President of operations for SunBridge and Harborside and Sandra Mann, Esquire, Legal Counsel for SunBridge came forward to give an overview of the proposal. Ms. Rogers provided some history and background and described the facility. She stated that there are currently 80 beds in 40 rooms and 12 rooms with 18 patients that are assisted living that they want to convert into 24 out of the 33 available skilled beds. She added that all rooms are built to nursing home standards and that the building is about 20 years old. She closed by saying that the proposed project is very cost effective.

There was no public testimony on this agenda item. Chair Vailas recognized a motion made by Mr. Wojtkiewicz to approve the SunBridge Clipper Home of Wolfeboro LTC 07-02 for \$10,000. Ms. Roberts seconded the motion. All Board members voted in favor and this agenda item passed unanimously.

**5. Public Hearing for Seacoast Region Physical Rehabilitation RFA (33 beds): Northeast Rehabilitation Hospital, REHAB 07-04, \$15,641,000**

**Discussion:** At this time Ms. Carrier did a swearing-in for those in the audience planning to testify who weren't present at the start of the meeting. Ms. Carrier stated that there were potential intervenors on this agenda item and that they should testify first.

Mr. David Ross, Administrator of SunBridge in Portsmouth, came forward to testify. He stated that SunBridge was requesting intervenor status as the subject matter is relative to their interest. He stated that SunBridge would be competing for patients and staff. He stated that there was no immediate justifiable reason for the project to go forward, he doesn't feel that there's an identified need and the beds were only made available because of the rule, not because of need. Ms. Crory asked Mr. Ross why he was so late asking for intervenor status since the RFA was issued in January. Mr. Ross stated that he was late finding out about the RFA and he mistakenly understood that legislation was tabled by the committee. Ms. Crory asked Mr. Ross why he used an outdated formula in his motion and asked what it's based on. Mr. Ross replied that he believes it was the wrong criteria. Chair Vailas stated that the question is whether there is a relationship between services provided at nursing homes versus the proposed rehab facility. Chair Vailas asked Mr. Ross if he would agree that Northeast Rehab takes care of more acute patients than a nursing home. Mr. Ross replied that they have the ability to do so, but many of the services can be provided at nursing homes. Chair Vailas stated that according to the rule, there is need for beds and many patients are driving out of state now. Ms. Roberts stated that the Board recently overhauled the rule about 4 years ago. Ms. Wheeler stated that the issue is more than going out of state for services; it is actually having to leave the seacoast region. Mr. Ross stated that nursing homes are far more cost effective. Ms. Crory stated that the motion said the project would cause excessive harm and that if need has been found the Board must issue the RFA. She stated that Mr. Ross believes the project is not financially viable, however the Board doesn't base decisions on beliefs. Ms. Griffin asked whether there were out-of-state patients at SunBridge. Mr. Ross replied rarely and only if there are relatives nearby. Ms. Griffin asked Mr. Ross if a patient is discharged from a NH hospital but lives out of state, are they referred to his facility. Mr. Ross replied that yes they would be. Ms. Roberts stated that insurance companies have strict criteria for admission to rehab facilities, but not for nursing homes and then asked if all patients meet the criteria. Mr. Ross replied that he wasn't sure.

Ms. Kathryn Connors Soderberg, Esquire, Legal Counsel for Whittier Rehabilitation Hospital in Haverhill, MA came forward to testify at this time. She stated that Whittier Rehabilitation Hospital was requesting intervenor status. She stated that Whittier has an interest as it is located 30 miles from the proposed facility and they would be competing for staff and patients. She stated that if denied intervenor status their interest would be impaired and that their motion was timely filed 3 days before the hearing. She also stated that there is no critical need and asked why Northeast Rehab Hospital has not secured a location. Ms. Almeda stated that the motions were very similar. Attorney Soderberg stated that she had not seen SunBridge's motion and that she had worked with members of the New Hampshire Health Care Association, which SunBridge is a member of. Ms. Crory asked if she had provided her document to SunBridge. Attorney Soderberg replied that she provided her document to Mr. John Poirier who then provided it to SunBridge. Ms. Crory asked the basis for requesting intervenor status. Attorney Soderberg replied that she believes revenues are inflated and not all costs are included; she doesn't believe the beds are needed.

Mr. John Malmberg, Esquire, representing Northeast Rehabilitation Hospital came forward at this time. Attorney Malmberg stated that Whittier is an out of state provider and the Board is not obligated to protect it. He also stated that Medicare qualifies them as an LTAC not a rehab hospital. He stated that the rule makes it clear that the intervenor shall not impair proceedings; the deadline is October 4 to make a decision. The Board can't grant continuance; that would impair the proceedings. He stated that the intervenor takes the proceedings as he/she finds them; the rule was adopted 4 years ago, there were 18 months of meetings and the intervenors were not present. Attorney Malmberg stated that the need rule has been on the books for 4 years and the Board has found need twice but the moratorium got in the way. He added that this is the only window of opportunity for additional beds on the Seacoast probably for another 10 years. Ms. Crory asked what advantage an intervenor would have. Attorney Malmberg replied that they would have the right to appeal. Ms. Almeda stated that an intervenor would have rights if a prehearing conference were held and if reconsideration occurred.

Attorney Soderberg and Mr. Alfred Arcidi, Senior Vice President of Whittier stated that they had a copy of the Massachusetts license and they are a provider of rehab services but are paid as an LTACH. She stated that the major problem is with deficiencies in the NRH CON application. Ms. Roberts asked if an LTACH has the same services as Northeast Rehab. Mr. Arcidi replied that they have an LTACH agreement with Medicare. Mr. Malmberg stated that there needs to be a distinction in services; Massachusetts does not make this distinction.

Board discussion ensued at this time. Ms. Almeda stated that she is inclined to grant intervenor status but is opposed to continuance as the applications have been public since June 7<sup>th</sup>. She questioned the out of state provider issue and whether the Board should consider that. Chair Vailas favored further Board discussion. Ms. Crory pointed out that if the Board didn't grant intervenor status to either one the issue of continuation would be moot. Ms. Griffin added that if either were denied they could still provide public testimony. Mr. Wojtkiewicz stated that he had no problem with SunBridge being an intervenor but did have a problem with Whittier being an intervenor. Ms. Roberts stated that she wasn't opposed to granting intervention. Ms. Wheeler questioned what benefits the parties would have if granted intervention today.

A motion was made by Ms. Crory and seconded by Mr. Chase to deny Whittier Rehabilitation Hospital intervenor status. Voting in favor were Mr. Chase, Dr. Sochalski, Mr. Wojtkiewicz, Ms. Crory, Ms. Almeda, Ms. Wheeler, and Mr. Stanton. Voting against the motion were Mr. Vailas, Ms. Roberts and Ms. Griffin. On a vote of 7 to 3 in favor, the motion passed and Whittier Rehabilitation Hospital was denied intervenor status.

A motion was then made by Ms. Crory and seconded by Ms. Wheeler to deny SunBridge intervenor status. Voting in favor were Ms. Crory, Dr. Sochalski and Ms. Wheeler. Voting against were Mr. Chase, Mr. Wojtkiewicz, Ms. Almeda, Ms. Roberts, Mr. Vailas, Ms. Griffin and Mr. Stanton. On a vote of 7 to 3 against, the motion failed.

A motion was then made by Mr. Chase and seconded by Ms. Almeda to grant SunBridge intervenor status. Voting in favor were Mr. Chase, Mr. Wojtkiewicz, Ms. Almeda, Ms. Roberts, Mr. Vailas, and Ms. Griffin. Voting against were Dr. Sochalski, Ms. Crory, Ms. Wheeler, and Mr. Stanton. On a vote of 6 to 4 in favor, the motion passed and SunBridge was granted intervenor status.

A final motion was made by Ms. Almeda and seconded by Ms. Roberts to deny continuance of the hearing as requested by SunBridge. All Board members voted in favor of the motion, and the hearing moved forward as scheduled.

Mr. Vailas left the meeting at this time and Ms. Roberts took over as Vice Chair.

Due to time restraints on some persons seeking to testify on this issue, Ms. Roberts allowed the following persons to testify in advance of the presentation by NRH:

- Ms. Patricia Cummings, Edgewood Centre, provided written testimony opposing the project citing an overlap of patients that would be vied for between the facilities, and the serious impact of even a 10% reduction in admissions should the proposal be approved.
- Dr. Clinton Frederick Miller spoke in favor of the project
- Dr. Scott Rusk spoke in favor of additional rehabilitation services

At this time NRH made its presentation to the Board. Representing NRH was Mr. John Prochilo, CEO. He began by reminding the Board that the rule history has already been discussed by the intervenor, and that the issues of need and long term care services versus rehabilitation services have been determined by the Board via rulemaking. With the issuance of the RFA, the issue becomes how and where to get patients to necessary rehabilitation services. He indicated that the aging population in the Seacoast is estimated at a 30.1% increase by 2015 – this is the population base NRH anticipates serving. He indicated that NRH has narrowed its location choices to two, both at the Pease Tradeport on a ground lease basis. He also spoke to the Board regarding the status of the proposed facility as a “remote location” and not a “satellite facility” as originally indicated in the application.

Ms. Griffin questioned the minimum number of beds needed to keep the project viable. Mr. James Murphy, CFO of NRH responded that 18-20 patients would be considered a “break even” point and 25 patients would be considered full operation.

Dr. James Whitlock then gave a brief overview of the differences between rehabilitation facilities and nursing facilities, citing the lack of surgery and emergency services as the largest differences.

Ms. Griffin asked how the project would be financed and the cost per bed. Mr. Murphy responded that the construction costs are in line as estimated and that a land lease will be involved. He stated that a benchmark was made to Whittier Rehabilitation Hospital’s renovations resulting in \$470,000 per bed from the ground up compared to Whittier’s \$435,000 per bed for renovations.



Board questions ensued regarding the difference between a remote location and a satellite facility and the possibility of the beds being moved. Attorney Malmberg reminded the Board that a move out of the service area could not occur since the service areas for rehabilitation beds are established by rule for that purpose. Ms. Almeda questioned whether NRH considered transferring some of its Salem beds to the Seacoast. Mr. Prochilo responded that this would be the equivalent of a satellite hospital, and that he had spoken to the area hospitals but none had the space to take this on. Mr. Wojtkiewicz asked if any consideration had been made for future LTACH beds in the state. Mr. Prochilo replied that the rules subcommittee, in which he participated, ensured that this category of bed was isolated from rehabilitation beds. This concluded NRH's presentation.

At this time intervenor SunBridge presented its position to the Board. Mr. David Ross testified and questioned the need for additional rehabilitation beds in the Seacoast area. He indicated that a rehabilitation stay was on average 15 days and that this was a little inconvenience that did not justify the cost of this project. He pointed out to the Board that the statewide number of rehabilitation beds indicated an overbedded situation. He closed by questioning whether existing facilities that provide rehabilitation services could accommodate shifts in patient care.

Public testimony was allowed at this time. The Board heard from the following:

- Ms. Ellen Edgerly, Brain Injury Assoc of NH, providing written testimony in favor of the project.
- Ms. Fran Walker and Mr. John Getts, Dover Rehabilitation Dover, NH, providing written testimony opposing the project, citing existing services already in place to care for persons needing rehabilitation as well as existing capacity to care for such persons. Dover also noted a lack of information and education about such available services in the area.
- Mr. Michael Lehrman, St. Ann Rehabilitation and Nursing Center (NH Catholic Charities), Dover, NH, providing written testimony opposing the project, citing adverse impact on existing providers of overlapping services in the area, short supply of rehabilitation staff, the neglected consideration of a previously long term moratorium on beds, and an incorrect bed need formula in the Board's rule.
- Mr. Daniel Estee, Administrator, Haven Health Center at Seacoast, Hampton, NH, providing written testimony opposing the project, citing existing services already in place to care for those with rehabilitation needs and the increased cost of such services if the project is approved.

Mr. Stanton left the meeting at this time.

- Ms. Eileen Bartlett, HealthSouth, Concord, NH, providing written testimony opposing the project, citing an overbedded status statewide for rehabilitation services, the impact on its own facility due to the lack of increase in the patient pool, and the viability of NRH to establish either a satellite facility or a remote location as required by CMS.
- Ms. Vivian Carlton, speaking on behalf of herself and her husband, providing written testimony in favor of the project that was read into the record by Ms. Roberts.
- Mr. John Poirier, President of the New Hampshire Health Care Association, speaking in opposition to the project, citing a "gray area" of patients that will be taken from SNF facilities to rehabilitation facilities with a devastating effect on nursing facilities to remain viable.
- Ms. Kathryn Soderberg, Esq., and Mr. Alfred Arcidi, Whittier Rehabilitation Hospital, speaking against the project, citing hidden costs of the NRH project heretofore not considered in the review process.

Board questions ensued during public testimony, centering on the current occupancy rates at nursing facilities, the impact on patients being diverted from other area facilities to the Seacoast, and the lengthy rulemaking process which promulgated the rules from which the need determination was drawn.

Ms. Almeda left the meeting at this time.

With public testimony concluded, Ms. Roberts then recognized intervenor SunBridge for rebuttal time. Mr. Ross reiterated for the Board the “gray area” mentioned by Mr. Poirier in his testimony, as well as the cost effectiveness of the project, and the fact that some patients can qualify for services at both types of facilities (e.g. hip fractures).

Attorney Malmberg then stated that NRH chose to waive its rebuttal time but pointed out to the Board that none of the previous testimony said anything about the anticipated population growth and aging in the area. He stated that the cost of care is almost the same per patient in either facility. He stated that more staff is needed for these facilities and that NRH has at least 40 contracts with schools to recruit additional staff.

Hearing no more testimony on the issue, Ms. Roberts then moved to Board discussion and deliberation. After brief discussion, a motion was made by Ms. Crory and seconded by Dr. Sochalski to approve NRH’s request for \$15,641,000 with conditions as follows:

- An identification of the final location and site plan
- Copies of admission policies as applicable to the new proposed facility
- Proof of membership to the New Hampshire Health Access Network for the proposed facility
- Proof of policies for persons for whom language is a barrier
- Proof of Performance Improvement Program Plan as applicable to the Seacoast facility
- Proof of transfer agreements for emergency transfer of patients
- Copies of contractual agreements for emergency services, outpatient services and diagnostic evaluation services
- Proof of CMS approval of designated “remote location” upon licensure and operation of the facility

Ms. Crory, Ms. Roberts, Dr. Sochalski, and Ms. Wheeler voted yes. Mr. Chase, Ms. Griffin and Mr. Wojtkiewicz voted no. On a vote of 4 to 3 in favor of the motion, the motion passed and a CON was granted to NRH.

Due to the late hour, Vice Chair Roberts then adjourned the meeting at 5:33 p.m.

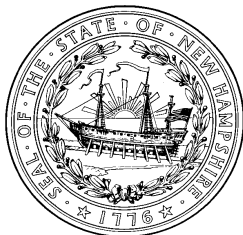
Signature:

\_\_\_\_\_  
Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



October 18, 2007

9:30 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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**Meeting called by:** Chair Nicholas Vailas      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Ms. Beth Ann Roberts, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz

**Staff Members:** Ms. Cindy Carrier, Ms. Angel McFetridge and Mr. Jeffery Peck

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Chair Vailas opened the meeting at 9:35 a.m.

### 1. Consent Agenda

- ☐ **Approve September 20, 2007 Board Meeting Minutes**
- ☐ **Findings of Fact – GoldenView Health Care, LTC07-01, \$933,967.40**
- ☐ **Findings of Fact – Sunbridge Clipper Home of Wolfeboro, LTC 07-02, \$10,000**
- ☐ **Findings of Fact – Northeast Rehabilitation Hospital, Rehab 07-04, \$15,641,000**
- ☐ **NSR Request - Change of license for nursing homes under the Genesis HealthCare Corporation**

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if the consent agenda items required any further discussion. If so, it would require removal from the consent agenda.

Ms. Wheeler made a motion to accept the consent agenda. Ms. Crory seconded the motion. Mr. Wojtkiewicz recused from the vote. Ms. Almeda recused from the vote and requested that the minutes reflect that she left before the vote was taken on the Northeast Rehabilitation Hospital agenda item. Ms. Griffin stated that she would be voting against the consent agenda because of Northeast Rehab Hospital's approval. The consent agenda was approved with a vote of 6 to 1.

Attorney Hodder spoke from the audience and stated that Laconia Center Genesis will be filing a motion for reconsideration relative to the approval of the Golden View Nursing Home application made last month.

Ms. Roberts joined the meeting at 9:40.

**2. Parkland Medical Center, Derry Medical Center, Catholic Medical Center - Petition for Reconsideration on Elliot Health System NSR Determination for Phase I Medical Office Building and Phase II Laboratory, Londonderry, NH**

**Discussion:** Chair Vailas recused himself from this agenda item and asked Ms. Crory to take over as Chair. She asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that this agenda item was postponed from the Board's 9/20/07 meeting. RSA 541-A, however, allows 60 days for action to be taken on any petition; therefore, the Board is within the statutory time frame to take up this matter. She stated that Elliot Hospital has supplied an objection to the joint petition filed. She reminded the Board that in accordance with He-Hea 210.01 (f) and (g) the Board may make a decision regarding a motion for reconsideration with or without an oral hearing of the motion and that the Board can also grant a motion for reconsideration in whole or in part, deny a motion for reconsideration in whole or in part, or order an evidentiary hearing with respect to the motion or any portion thereof. Attorney John Malmberg, representing the petitioners, stated that both parties were willing to forego any presentations.

Dr. Sochalski made a motion to not approve the reconsideration request. Ms. Griffin seconded the motion. The motion passed with a 5 to 4 vote with Mr. Chase, Dr. Sochalski, Ms. Wheeler, Ms. Crory and Ms. Griffin in favor and Ms. Roberts, Ms. Almeda, Mr. Stanton and Mr. Wojtkiewicz against.

**3. St. Joseph Hospital, Change of Scope of CON MRI 04-02, Reduced from \$2,702,359 to \$600,000**

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that St. Joseph Hospital ("SJH") is requesting a Change of Scope of CON MRI 04-02 for fixed unit MRI services. He stated that SJH has chosen to lease a 1.5T fixed unit rather than purchase a 3.0T unit; thus the cost of such acquisition will now be eliminated. He added that instead, SJH will attribute the total construction costs of the project to this CON – they had formerly been included in their facility wide project, AC 02-04. Mr. Peck stated that the project will now shift from an equipment only CON to a construction CON, thereby giving SJH additional time to complete the project.

At this time, Ms. Julie Eberhardt, Vice President of Strategic Planning and Ms. Kathy Cowette, Planning Manager of St. Joseph Hospital testified before the Board. Ms. Eberhardt stated that the assumptions made about the project in 2003 don't always make sense 3 years later. She stated that the 1.5T magnet will meet their needs and that technology on the 3.0T hasn't evolved as fast as expected. She added that SJH would change to an operating agreement similar to the existing mobile service but will be considered a fixed site. Ms. Roberts stated that she would expect higher charges when SJH was purchasing and questioned that if the cost is now decreased then why the cost structure hasn't decreased as well. Ms. Eberhardt stated that SJH is now in a better position to evaluate its charge structure now that there is more information to do so. Ms. Almeda stated that the next item on the agenda is for an MRI in Nashua and asked if they expect any impact on their MRI service. Ms. Cowette stated that it is a replacement of an existing unit and therefore, no impact is expected. Chair Vailas asked whether the request should be an NSR request. Ms. Carrier explained that the best procedure is a change of scope in order to keep the record clean. Ms. Eberhardt stated that the install would be complete by November 4<sup>th</sup>.

At this time, Mr. Wojtkiewicz made a motion to grant SJH a change of scope for CON MRI 04-02, reduced from \$2,702,359 to \$600,000. Mr. Chase seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

**4. NSR Request – Four Seasons Imaging, LLC – MRI unit in Nashua, NH \$360,000**

**Discussion:** Chair Vailas requested that Mr. Peck introduce this agenda item. Mr. Peck stated that Four Seasons Imaging, LLC is seeking an NSR determination to acquire an MRI unit for \$360,000 for use at its affiliated orthopedic practice. He added that according to the petitioner, mobile service has been provided by a vendor and the group now seeks to supply the service itself to its patients using a mobile unit environment. He stated that because the project is intended to serve outpatients and the equipment cost is below the statutory threshold, the petitioner concludes that the proposal is not subject to CON review. Mr. Peck added that HSPR staff concurs with the determination.

Ms. Lucy Hodder, Esquire and Mr. Ryan Ouellette, Operations Manager for Four Seasons Imaging, LLC came forward to provide testimony. Ms. Almeda asked if the service was currently a mobile service. Attorney Hodder replied that it was and it was on a van and stayed at the site; the new unit will be on a trailer but will also stay on site.

Hearing no further discussion, Chair Vailas recognized a motion from Ms. Crory to approve the NSR request for Four Seasons Imaging, LLC for a MRI unit in Nashua, NH for \$360,000. Mr. Wojtkiewicz seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

**5. Public Hearing – He-Hea 100 Organization Rules**

**Discussion:** Ms. Carrier introduced this agenda item. She stated that at this time, the Board will hear testimony in support of and opposition to the proposed Organizational rule, He-Hea 100. She stated that the 100 rules do not expire. Attorney Hodder asked from the audience if the Board's Practice and Procedure subcommittee would continue reviewing the rule. Ms. Carrier replied that the work on this rule was completed last spring and that only minor changes were made to the rule. Ms. Crory referenced page 3 and asked if it was necessary to put the hours and telephone number in the rule. Ms. Carrier replied that it is the State standard in the agency organizational rules. Ms. Wheeler stated that she sees the advantage of it and that it makes the Board more available. Ms. Carrier responded that it is a requirement of rulemaking to include this information.

Ms. Wheeler made a motion to approve He-Hea 100 as per the Initial Proposal dated 8/2/07 for submission to JLCAR barring any comments received during the seven-day comment period. Ms. Griffin seconded the motion. All Board members voted in favor and the agenda item was unanimously approved.

**6. Public Hearing – He-Hea 200-300 Practice and Procedures Rules**

**Discussion:** Ms. Carrier introduced this agenda item. She stated that the Board is adopting an unchanged rule to keep it active. She also stated that there is a subcommittee in place to make amendments to the rule. Ms. Wheeler stated that subcommittee meetings are open to everyone and that she hopes as many people as possible will come and provide ideas. Ms. Roberts stated

that the acute care subcommittee has suggested items to move to the 200-300 rule and hopes people will participate.

Ms. Wheeler made a motion to approve He-Hea 200-300 unchanged with anticipation of changes at a later date barring any comments received during the seven-day comment period. Ms. Griffin seconded the motion. Ms. Roberts seconded the motion. All Board members voted in favor and the agenda item was unanimously approved.

## **7. Public Hearing – He-Hea 2100 Long Term Acute Care Hospitals Rules**

**Discussion:** Ms. Carrier introduced this agenda item. She stated that at this time, the Board will hear testimony in support of and opposition to the proposed Long Term Acute Care Hospital rule, He-Hea 2100.

Ms. Lucy Hodder, Attorney for Specialty Hospitals of America stated that she was pleased with the work of the subcommittee and hopes there will be a final rule soon. Ms. Leslie Melby, Vice President of NH Hospital Association, thanked the Board and Staff and stated that while NHHA is mostly supportive of the rule, they are concerned with the possibility of a monopoly based on the 60-bed minimum in the rule. She stated that once the freestanding 60-bed unit is built, it appears that the State population would have to double before another could be built (only one is guaranteed). In the meantime an existing LTACH could apply for additional beds via the satellite feature; this would create an unfair advantage for the existing LTACH provider. Ms. Roberts asked the LTACH subcommittee where the 60-bed minimum was derived and Mr. Wojtkiewicz stated that it was determined that the 60 beds were financially feasible but that there would be an opportunity to change this in the future. Ms. Melby also pointed out that LTACHs are highly dependent on Medicare and as aging population trends continue Medicare payments will be reduced. Other testimony was received on the rule from Mr. David Ross, Administrator, SunBridge of Portsmouth who suggested a change to section He-Hea 2102.11 to include the phrase “other facilities providing similar services.” Mr. John Poirior of the NH Healthcare Association stated that he supports Mr. Ross’ testimony. Hearing no other testimony, Chair Vailas closed the hearing and proceeded to Board discussion on the rule. A lengthy Board discussion centered on the need for a minimum bed number and the impact of the new service on other providers. Ms. Wheeler requested that Staff assemble a summary of the work that was completed by the subcommittee. Ms. Carrier will complete this summary and forward to the Board.

## **8. Other Administrative Business**

- ❑ Ms. Carrier stated that the next meeting of the Board would take place on November 15, 2007.
- ❑ Ms. Wheeler corrected the dates for the HB 727 study commission stating the next meeting will be on November 27, 2007. The commission is a two-year committee. Ms. Wheeler thanked Ms. Almeda for attending in her absence.

- ❑ The Acute Care Subcommittee will meet on November 8, 2007 at 57 Regional Drive.
- ❑ SB 114 Committee met on October 17, 2007. Senator Sgambati introduced some issues to discuss (leases and expedited review).
- ❑ Ms Wheeler asked if a speaker for amplification could be set up for those people who have a difficult time hearing the proceedings. Ms. Carrier will look into this.

Chair Vailas adjourned the meeting at 11:45 a.m.

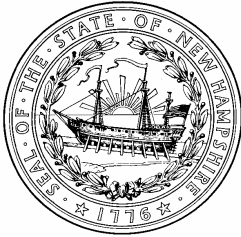
Signature:

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Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



November 15, 2007

9:30 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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<b>Meeting called by:</b>	Chair Nicholas Vailas	<b>Note Taker:</b> HSPR Staff
<b>Type of meeting:</b>	Certificate of Need - Board Meeting	
<b>Attendees:</b>	Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Ms. Beth Ann Roberts, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz	
<b>Staff Members:</b>	Ms. Cindy Carrier, Ms. Angel McFetridge, Ms. Lauren LeBrun and Mr. Jeffery Peck	

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Chair Vailas opened the meeting at 9:39 a.m.

### 1. Consent Agenda

- ☐ **Approve October 18, 2007 Board Meeting Minutes**

**Discussion:** Chair Vailas asked Mr. Peck to conduct a general swearing-in of audience members planning to testify. He then asked Board members if the consent agenda items required any further discussion. If so, it would require removal from the consent agenda.

Ms. Roberts made a motion to accept the consent agenda. Ms. Almeda seconded the motion. The consent agenda was approved unanimously.

### 2. Determine Issuance of December 1, 2007 Mobile PET RFA

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the RFA for Mobile PET is due to be issued. He stated that no letters of intent were received nor any other interest expressed in the issuance of an RFA; therefore HSPR staff concludes that the current vendors can meet the needs of the State. Accordingly, HSPR staff recommends that no RFA be issued.

Mr. Wojtkiewicz made a motion to not issue the Mobile PET RFA. Ms. Griffin seconded the motion. All Board members voted in favor and the motion was unanimously approved.



**3. Public Hearing – Mary Hitchcock Memorial Hospital for ASC facility in Lebanon, NH, ASC 07-05, \$32,000,000**

**Discussion:** Chair Vailas introduced this item asking if anyone from Mary Hitchcock would be testifying. At this time Mr. Neil Castaldo, Esquire introduced Ms. Nancy Formella, President; Mr. Michael Sparks, Orthopedic Surgeon & Medical Director; Mr. Dan Jantzson, CFO and Mr. Bill Mroz, Vice President Clinical Services.

Ms. Formella stated that she was pleased to meet the Board and provided her background. She explained that the new ASC would provide real world training and cost effective services. She stated that MHMH has been faced continuously with scheduling problems due to high OR utilization and has had to delay ambulatory surgical operations in order to handle trauma cases. A large number of cases handled in the main operating rooms are ambulatory surgical type cases. MHMH is proposing a free-standing six (6) operating room ASC facility on the MHMH campus. This facility will provide more efficient, cost effective care. Ms. Formella acknowledged the concern of some community hospitals regarding an increase in market share for MHMH and explained that MHMH is not looking to increase their market share and they were willing to assist community hospitals in providing care locally. She also stated that Valley Regional Hospital (one of those concerned) provided a letter of support for the project. Dr. Michael Sparks then testified regarding the cancellations and delays stating that from a surgeon's perspective as well as a patient perspective the current situation was extremely frustrating. He stated that the hospital functions as both a tertiary hospital for the state as well as a community hospital. It currently has 25 operating rooms with 16 services that 100 surgeons utilize. There are 65-75 elective cases per day and emergency cases and must be fit within the blocks of time assigned to each operating room. This lack of efficiency impacts patients and staff, and increases costs. He closed by stating that the ASC will allow the hospital to follow its mission as a teaching hospital by transferring cases that are minimally invasive.

Mr. Bill Mroz then testified on the design of the ASC, stating that the patient perspective was an important aspect of the design. He stated that MHMH is paying attention to all the details of the ASC including the waiting rooms, separate areas for pediatric and adult patients, and ample parking. The facility will operate Monday through Friday and since patient registration will be done prior, it should be no more than one hour between patient arrival and delivery to the operating room. To cover staffing, MHMH will shift staff from the hospital's main operating rooms to the new setting.

Mr. Dan Jantzson testified that the proposal was the least expensive and most efficient option. A total of 80% of the financing will be through tax-exempt bonds, and 20% will be through internal equity. However, MHMH may decide to use more internal funds depending on the market.

Mr. Neil Castaldo then thanked the HSPR staff and Board, stating that the ASC would allow for better experiences for patients and staff as well as training opportunities for hospital staff.

Board discussion ensued on the agenda item. Dr. Sochalski asked if the costs were being reduced to the hospital, why was the cost to payers not being reduced more. Mr. Jantzson responded that the cost efficiency will be achieved; however many services at the hospital lose money every year and MHMH is always looking for ways to become more efficient to reduce the losses. Ms. Roberts asked if the ASC will be hospital based or ASC based billing. Mr. Jantzson stated that the services would be hospital based and billed as such. Ms. Roberts stated that the insurance sector usually negotiates lower fees with free-standing ASC facilities; however, since the MHMH ASC will be

under the hospital the fees would still be at the higher hospital level of billing. She stated that she worries about looking to community hospitals to provide services locally but if a patient shift should occur, the MHMH ASC will drive costs higher.

Chair Vailas stated that he sees a \$32,000,000 increase in overhead that will add costs to the system, and an ASC should have lower costs; it does not appear that this will happen here. Mr. Castaldo stated that ASC regulations are pro-competitive and the market should determine where services are provided. Mr. Jantzson stated that MHMH is only moving the services across the parking lot and doing so in the least costly way.

Ms. Crory asked if MHMH was willing to accept the condition which HSPR staff recommended, and Mr. Castaldo stated that a letter from the lender is usually given after the closing of financing; however MHMH is willing to provide a letter of intent from the financing company before construction and a final letter at closing.

Chair Vailas then opened the floor for public testimony. As no other parties were present to testify Ms. Wheeler made a motion to grant a CON to MHMH with the condition that a letter of intent from the bond issuing authority be provided to the Board prior to the commencement of construction. Ms. Crory seconded the motion. All Board members voted in favor and this agenda item was unanimously approved with condition.

**4. Laconia Center Genesis Healthcare, Request for Reconsideration of Long Term Care RFA Region 3 (Golden View Health Care Center, Laconia Center Genesis Healthcare)**

**Discussion:** Mr. Wojtkiewicz recused himself from this agenda item. Chair Vailas introduced this item stating he was not comfortable with the way he handled the original public hearing and would like to give more time for testimony. Attorney Lucy Hodder and Mr. John Allard (representing Genesis Laconia) approached the Board to provide testimony. Attorney Hodder asked the Board for reconsideration of its decision granting the 33 beds in Region 3 to a location in a seasonal community (Golden View) instead of granting those beds to a location in the middle of Region 3 (Genesis Laconia). Attorney Hodder cited rule He-Hea 906.01 stating that the Board shall grant a CON to 1 or more applicants. She stated that this wasn't granted because the other applicant didn't agree to a reallocation of beds. She stated that the Board didn't state how the standards were met by Golden View and not met by Laconia. She also stated that Laconia provided services to thousands more Medicaid patients. She brought up the issue of financial feasibility and stated that this standard does not address costs, just the ability to pay debt, etc. She stated that Laconia Center has no debt. She added that the applicant should show best quality and not the least cost. Focusing on financial feasibility, she then asked about the 80-bed senior center being built nearby and questioned its relationship to Golden View and Ben Sanders, the manager of Golden View. She added that Jim Murray said it was an affiliate of Golden View. Attorney Hodder clarified to the Board that there was no change of ownership of Laconia Center; it is still owned by Genesis Healthcare.

At this time Chair Vailas opened the meeting to Board discussion. Ms. Crory stated that she went over the request carefully and doesn't agree with the assertion that HSPR staff didn't thoroughly review the standards. She added that financial consideration was fully discussed. She stated that she is concerned that the Board will spend months on this when there is no new information. Ms. Wheeler asked why Laconia wasn't making incremental improvements below the threshold. Attorney Hodder replied that Genesis Laconia can only do so much below the threshold and that Genesis Laconia is an older facility. She added that it wasn't her intention to criticize the staff.

Chair Vailas stated that the process has to be fair and the process was not fair in this case. Ms. Wheeler stated that she strongly disagreed. Attorney Hodder stated that the RFA did not ask for one provider and did not clarify the allocation of beds or the rules in effect at the time.

Attorney Andrew Eills came forward at this time to present to the Board on behalf of Golden View Health Care. Attorney Eills expressed his appreciation of the difficult decisions the Board has to make and agreed that collaborative efforts need to be encouraged. He stated that the standard of review is reconsideration if errors of law or errors of fact occur. He went on to say that Laconia stated that there was an error of law but he found there was no error of law made. Both applicants had 33-bed applications, and the Board made the right decision and reviewed all of the standards properly. Attorney Eills spoke to the Medicaid issue and stated that Golden View is happy to provide more beds to Medicaid and that Golden View had conservatively based financials on 100% Medicaid funding of the beds. He then addressed the analysis of debt stating that costs from the 2002 addition were included and that the senior center is not affiliated with Golden View. He stated that both applicants filed under the rules in effect when the RFA was issued and that the issue of rules was never raised during the process.

Ms. Crory stated that Attorney Hodder questioned the ownership of Genesis and a Senior Living Project and asked Attorney Eills to respond. Attorney Eills first responded that at the October Board meeting there was notice of a private equity buyout of this and many other Genesis facilities, and questioned whether a new owner would allow a costly project to go forward. He clarified that Golden View is not an affiliate and is not financing the Senior Living project at all and there is no financial connection. He stated that Golden View's Board looked into joining into this but did not as the bond documents did not allow this. Further Board discussion ensued. Ms. Crory stated that if the HSPR Board grants reconsideration the Board will have to listen to all arguments again and asked how this would affect the process. Ms. Carrier clarified that the issue today is whether to reconsider the decision and this has no bearing on any further RFA. Mr. Chase stated that he is unsure whether the decision is in the best interest of the community. If the Board looks beyond the cost, the issues go beyond that, as Genesis will still be back to do a renovation project. Attorney Eills stated that the Genesis application was for 33 beds and additions and there was no address of renovating other parts of the facility. Attorney Hodder stated that the new space would affect the whole facility and that Laconia could build 10 beds for \$3.5 million. Ms. Almeda stated that the aggrieved applicant should have the right to a rehearing. She also stated that both applicants were going for the full amount of beds and that on the date of the hearing the Board had to make a decision. She also stated that 75% of the Region 3 population is in Laconia and that she doesn't feel that the Board had enough information to rationally allocate the beds and that she would support a motion for reconsideration. Ms. Wheeler stated that she opposes a motion for reconsideration and stated that the Board had sufficient information to make its decision and added that it is not required to split the beds. Dr. Sochalski stated that he agreed that the aggrieved party should have the opportunity for reconsideration but there is no obligation to award a CON to more than 1 applicant. He added that he opposes reconsideration. Chair Vailas stated that he supports reconsideration. Ms. Crory stated that the Board must follow the law as it exists in the RSA. She added that the Board couldn't split the beds without an amended proposal and that the Board did follow the law and rules.

At this time, Ms. Almeda made a motion to grant reconsideration of the Long Term Care RFA for Region 3. Mr. Chase seconded the motion. A roll call vote was taken and the motion passed with Mr. Chase, Ms. Almeda, Ms. Roberts, Mr. Vailas and Mr. Stanton voting in favor and Ms. Crory, Ms. Griffin, Dr. Sochalski and Ms. Wheeler against (5 to 4). Mr. Vailas stated that he would be the presiding officer for the prehearing conference.

At this time, Chair Vailas called for a 10-minute recess. Mr. Chase left the meeting at this time.

**5. HVL Corporation, d/b/a Whittier Rehabilitation Hospital-Haverhill, MA, Request for Reconsideration and Rehearing of Denial of Intervener Status in the Matter of Northeast Rehabilitation Hospital, REHAB 07-04**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that HVL Corporation, d/b/a Whittier Rehabilitation Hospital-Haverhill (MA), is seeking reconsideration and rehearing of the Board's denial of Whittier as an Intervener in the matter of Northeast Rehabilitation Hospital (NRH), REHAB 07-04. She stated that Whittier submitted a request to be an intervener on the NRH proposal 3 days before the September 20, 2007 hearing on the application. At that meeting, the Board denied Whittier intervener status. NRH filed an objection to this latest petition. She reminded the Board that if granted, any reconsideration hearing must be held within 30-days of receipt of the request. This would be no later than November 17, 2007. She added that HSPR staff recommended that the Board seek agreement from the parties, if the request for reconsideration is granted and a hearing is to be held, to waive this statutory requirement and allow sufficient time to prepare for any hearing. She added that in accordance with He-Hea 210.01 (f) and (g) the Board may make a decision regarding a motion for reconsideration with or without an oral hearing of the motion.

At this time, Attorney Ken Rubinstein came before the Board to testify. Ms. Griffin asked if at the time Whittier was denied, was there more than one request for intervener status. Ms. Carrier stated that yes, SunBridge was granted and Whittier was denied. Ms. Almeda questioned the "dormant commerce clause" on page one of the request. Attorney Rubinstien stated that the 2 petitions were identical and the Board granted intervener status to SunBridge but not to Whittier. He stated that the only difference is that Whittier is out of state and the Board can't apply rules that benefit one person but hurt another. Mr. Wojtkiewicz stated that the issue was the distance between the entities. He stated that 30 miles is a long distance to see an impact. Attorney Rubinstein stated that Whittier meets the requirements that it is an affected party. Dr. Sochalski asked whether Whittier served notice to NRH. Attorney Rubinstein replied that they had but not directly and that there was no prejudice there. Dr. Sochalski stated that this did not meet He-Hea 208.06(a) which states: "All petitions, motions, replies or objections, exhibits, memoranda or other documents filed by a party to a proceeding governed by this chapter, shall be served by the proponent upon all parties by: (1) Depositing a copy of the document in the United States mail, first class postage prepaid, addressed to the last address given to the board by the party being serviced no later than the day the document is filed with the board; or (2) Delivering a copy of the document in-hand on or before the date it is filed with the board." Ms. Wheeler stated that she had voted against both interveners at the original hearing and was not in favor of granting intervener status to Whittier Rehabilitation now. Ms. Almeda echoed Ms. Wheeler's comments and stated that she felt that SunBridge's intervener status was appropriate because they are a provider in Region 5 while Whittier is not.

At this time, Attorney John Malmberg came before the Board to testify. Attorney Malmberg stated that the supplemental filing presented by Whittier was outside of the statute, as it must be filed within 20 business days after a decision is made and it was filed three weeks after the deadline. He stated that neither Sunbridge nor Whittier were qualified to be interveners.

After continued discussion by the Board, Mr. Wojtkiewicz made a motion to not grant reconsideration of the Board's decision to deny intervener status to Whittier. Ms. Wheeler

seconded the motion. All Board members voted in favor the motion and the motion was passed unanimously.

- 6. Request for Reconsideration of Northeast Rehabilitation Hospital, REHAB 07-04, by:**
- a. The Edgewood Center, Portsmouth, NH**
  - b. HVL Corporation, d/b/a/ Whittier Rehabilitation Hospital, Haverhill, MA**
  - c. NH Catholic Charities, d/b/a/ St. Ann Rehabilitation and Nursing Center, Dover, NH**
  - d. Intervener SunBridge Healthcare Corporation, d/b/a SunBridge Care and Rehabilitation for Portsmouth, Exeter, Rochester, and Langdon Place of Dover**

**Discussion:**

Ms. Carrier introduced the request for reconsideration of Northeast Rehab Hospital, REHAB 07-04 stating that four parties have requested reconsideration.

Ms. Crory asked if all the requests are similar and Ms. Carrier confirmed that they were indeed similar.

Dr. Sochalski asked if Northeast Rehabilitation was served notice in compliance with He-Hea 208.09 and Attorney Malmberg stated that the original request for reconsideration for Edgewood Center was not served but Whittier Rehab, NH Catholic Charities and SunBridge Healthcare served notice in compliance with the regulation. Ms. Patricia Cummings, Edgewood Center, apologized for not serving notice stating that she was not aware of the requirement. Ms. Cummings stated that it is not about competition, it's about survival of the current facilities.

At this time, Mr. David Ross of SunBridge Healthcare came forward to testify stating that the Board's decision was not consistent with RSA 151-C in that it does not avoid unnecessary duplication nor reduce costs. Mr. Michael Lehman, NH Catholic Charities, then came forward and stated that it was not their intent to overload the Board with information at the hearing, and that there will be an impact on the existing Seacoast providers' costs and quality. Ms. Crory asked if the Board acted in an illegal manner and Mr. Lehman stated that he did not believe so.

Ms. Roberts stated that she generally supports allowing people to intervene; however, she has not heard any new information in today's testimony.

Ms. Roberts left the meeting at 12:30 p.m.

At this time, Attorney Malmberg came forward to testify. Attorney Malmberg stated that NRH is not a nursing home and therefore none of the parties testifying before the board are aggrieved parties. Impact is minimal at best since the data reveals a total of about 110 patients a year spread over the four parties.

Ms. Wheeler asked if any Board member felt they did not have the opportunity to hear all information at the September meeting. She stands by her decision to grant NRH a CON, and Ms. Crory and Dr. Sochalski said they do as well.

At this time Ms. Griffin made a motion to grant reconsideration and Ms. Almeda seconded. Members Griffin, Almeda, Stanton, Vailas and Wojtkiewicz voted in favor of granting a rehearing with Members Crory, Wheeler and Sochalski voting against granting a rehearing. Therefore the motion passed with a vote of 5 – 3.

At this time a motion was made by Ms. Wheeler and seconded by Ms. Crory to adjust the agenda to hear Item #8 (Wentworth-Douglass Hospital) next. All Board members voted in favor. Mr. Wojtkiewicz was appointed to be the presiding officer for the prehearing conference.

**7. Wentworth-Douglass Hospital, Change of Scope of CON AC 05-05, from \$8,709,504 to \$13,851,994**

**Discussion:**

Mr. Peck introduced this item and Ms. Crory made a motion to approve the request for a change of scope. Mr. Stanton seconded. The Board then voted unanimously to approve the Change of Scope of CON AC 05-05.

At this time a motion was made by Ms. Wheeler and seconded by Ms. Almeda to adjust the agenda to hear Item #9 next. All Board members voted in favor.

**8. Wentworth-Douglass Hospital, Motion to Amend NSR Determination for Replacement Radiation Therapy Equipment and Construction**

**Discussion:**

Ms. Carrier introduced this item and explained that the Board letter had an error and that the correct cost of the project was \$2,232,000, not the stated amount of \$2,504,754. Ms. Crory made a motion and Ms. Griffin seconded to approve the amendment to the NSR subject to the submission of a construction contract and the Marshall and Swift comparison. The Board voted unanimously to approve.

**9. Follow-Up Discussion – Initial Proposal, He-Hea 2100 LTACH Rules**

**Discussion:**

Mr. Sylvio Dupuis approached the Board and respectfully requested that given the constraints on time this item be delayed until the next scheduled meeting. Ms. Carrier explained that the final proposal must be approved by December 13, 2007 and the Board could schedule another meeting prior to that to discuss. Ms. Crory asked that the Board spend 20 minutes now, as she would like to see the rule move forward.

At this time, Mr. Dupuis and Attorney Hodder came forward to provide testimony and answer Board questions. Board questions for the rule centered on the bed minimums, avoiding a monopoly, and the length of time between issuance of RFAs.

After Board discussion, Ms. Crory made a motion and Mr. Wojtkiewicz seconded to have Ms. Almeda work with HSPR staff to make changes before the December 13, 2007 meeting. The Board voted unanimously in favor.

**10. Other Administrative Business**

- ☐ Ms. Carrier stated that the next meeting of the Board would take place on December 13, 2007.
- ☐ The 2008 Board Meeting Schedule has been passed out.
- ☐ Ms. Carrier attended a JLCAR meeting this morning to discuss the He-Hea 100 and He-Hea 200-300 rules. JLCAR has conditionally approved both rules.
- ☐ The Acute Care Subcommittee will meet on December 11, 2007 at Room 468, Brown Building, Concord, NH.

Chair Vailas then adjourned the meeting at 1:25 p.m.

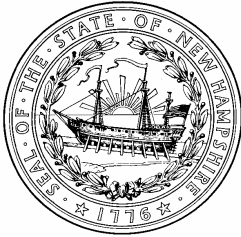
Signature:

\_\_\_\_\_  
Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



December 13, 2007

9:30 a.m.

Board Meeting

Legislative Office Building

Room 305-307

33 North State Street

Concord, NH 03301

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**Meeting called by:** Chair Nicholas Vailas      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz

**Excused:** Ms. Beth Ann Roberts

**Staff Members:** Ms. Cindy Carrier, Ms. Lauren LeBrun and Mr. Jeffery Peck

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Chair Vailas opened the meeting at 9:35 a.m.

### 1. Consent Agenda

- ☐ Approve November 15, 2007 Board Meeting Minutes
- ☐ Approve Findings of Fact for MHMH, ASC 07-05, \$32,000,000
- ☐ Southern NH Medical Center (SNHMC), Nashua, NH – NSR petition to purchase 2<sup>nd</sup> fixed unit MRI at SNHMC campus

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if the consent agenda items required any further discussion. If so, it would require removal from the consent agenda.

Ms. Wheeler made a motion to accept the consent agenda. Mr. Wojtkiewicz seconded the motion. The consent agenda was approved unanimously.

### 2. Determine Issuance of January 1, 2008 Mobile MRI RFA

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the RFA for Mobile MRI services is due to be issued. He stated that no letters of intent were received nor any other interest expressed in the issuance of an RFA; therefore HSPR staff concludes that the current vendors can meet the needs of the State. Accordingly, HSPR staff recommends that no RFA be issued unless a request is received by December 26, 2007.



Mr. Wojtkiewicz made a motion to not issue the Mobile PET RFA unless any request is received by December 26, 2007. Ms. Almeda seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**3. Riverwoods at Exeter – request to submit CCRC expansion application**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier stated that Riverwoods at Exeter was requesting permission to submit an application for a CCRC (Continuing Care Retirement Community) expansion. She stated that they would be developing a third community which would include nursing home beds that are only available to the residents but that these nursing beds would be subject to CON review. She indicated that although a moratorium exists preventing the granting of any nursing home through June 30, 2009, the Board has granted submission of such CCRC applications as the beds are reserved for exclusive use of the CCRC residents and are not available to the public. Ms. Almeda asked if there are precedents on approving additional nursing home beds in this situation. Ms. Carrier confirmed that since the beds are only available to the residents of the CCRC in the past the Board has approved such applications.

Ms. Dawn Barker, Project Manager at Riverwoods approached the Board to testify stating that currently Riverwoods has two communities and would be expanding to include a third.

Ms. Crory made a motion to approve the request to submit the CCRC expansion application for nursing home beds. Ms. Almeda seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**4. Approve the Conditional Response of Rule He-Hea 100, Board Organization**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier stated that JLCAR had conditionally approved this rule with minor changes as noted on page four (4) of the document. Ms. Wheeler made a motion to approve the conditional response of Rule He-Hea 100. Mr. Stanton seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**5. Approve the Conditional Response of Rule He-Hea 200-300, Board Practice and Procedures**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier stated that JLCAR had conditionally approved this rule with minor changes as noted throughout the document but indicated that none were substantive to change the intent of the rule as presented. She also stated that JLCAR has advised the Board to seek legislation to change the statute to allow for any current edition date of the reference materials used in the review of applications (R.S. Means and Marshall & Swift). Ms. Crory made a motion to approve the conditional response of Rule He-Hea 200-300 and to seek before the next session, support to submit a bill to accommodate the date requirements needed in the statute. Mr. Stanton seconded the motion. Board discussion ensued on the timeliness of other necessary legislation needed to improve the statute. Members Almeda and Wheeler both voiced concerns that such legislation may not be opportune. Ms. Almeda and Ms. Wheeler voted against the motion. On a vote of 7 to 2 in favor the motion passed.

**6. Approve Final Proposal of He-Hea 2100 LTACH Rule**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier stated that following the last Board meeting Ms. Almeda was instructed to work with staff to finalize this rule. Ms. Almeda provided the background and stated that NHHA and SHA are satisfied with the changes, as follows:

A definition has been added for “deeming authority”.

In 2102.04 under Determination of Unmet Need the rule now states that two years after the first facility becomes operational another RFA would be issued, then one every three years thereafter.

2104.01 states that if need is determined, it will be subject to a minimum of 10 beds. This would allow a satellite in the service area of a CAH or a CAH to apply for a HwH.

Ms. Crory asked if there must be a total of 10 beds before the RFA is issued. Ms. Almeda stated that the initial RFA would be for about 68 beds and waiting for 10 beds would prevent a monopoly. Mr. Wojtkiewicz stated that the rule hasn't changed much and 10 beds would not be financially feasible and the first provider would still have a monopoly. Mr. Vailas stated that the rule can be changed in the future but the Board needed to get this going.

Ms. Wheeler made a motion to approve the final proposal of He-Hea 2100. Mr. Stanton seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**7. Discuss Procedures for Re-adoption of Rules He-Hea 600, MRI and He-Hea 1900, ASC**

**Discussion:** Ms. Carrier introduced this item and stated that the staff was willing to make updates and bring them to the Board which could then break into subcommittee if necessary. Ms. Crory stated that we need to get these completed and to JLCAR before the rules expire and asked that the staff send out a memo to the HSPR mailing list asking for written comments. Ms. Carrier stated that this would be done. No vote was needed, but all Board members agreed this was a good approach.

**8. Golden View Health Care Center Motion to Clarify HSPR Board's Authority to Review Applications Only as Originally Submitted or Formally Amended**

**Discussion:** Mr. Wojtkiewicz recused himself from this discussion. At Ms. Crory's request a 10 minute break was called in order to review documents received on Wednesday evening.

Ms. Carrier introduced this item stating that the motion would be to rule that the applications be reviewed as submitted for 33 beds each without the opportunity to split the beds. The decision made will carry into a prehearing conference. Each party will be allowed to speak to this motion. Ms. Crory asked if the focus of the rehearing would not include splitting of the beds if today's motion is approved. Ms. Carrier responded yes.

Attorney Andrew Eills, Ms. Susan Palmer-Terry, Consultant and Ms. Jeanne Sanders, Administrator approached the Board to testify on behalf of Golden View Health Care. Attorney Eills stated that when the Board granted reconsideration to Laconia Genesis it didn't vote as to whether the Board would rehear applications as submitted or if they would consider splitting the beds among the applicants. He also stated that since Laconia Genesis did not amend their application in the proper manner, there was no basis for splitting the beds. Chair Vailas stated that it seemed

like Golden View was trying to limit the Board's choices. Attorney Eills stated that they just wanted to clarify what the Board would be hearing.

Ms. Susan Palmer-Terry testified and provided a chronology of the process for the Board. She stated that the Board must consider the applications as originally submitted since on January 2, 2007 the RFA issued did not specify how the beds would be allocated and both applicants submitted applications for 33 beds. All financial and other assumptions were based on 33 beds. She stated applications can be changed during completeness if an applicant feels a need to do this, yet neither application was changed. HSPR staff analyzed each application as submitted and when the analysis was issued each applicant had the opportunity to provide additional information. Neither applicant deemed this necessary. The subject of the hearing on September 27, 2007 was the 33 beds in Region 3. At the hearing new scenarios were presented by Laconia Genesis that had not been discussed or presented previously. The rehearing should only consider if the Board erred in making its decision to grant a CON to Golden View, not to discuss changing the allocation of beds.

Attorney Eills stated that the legal issue is whether to place conditions on an application. He stated that it is legal to place conditions on a CON but it cannot violate the statute. He cited RSA 151-C:8, XII – if the nature, scope or location of a project substantially differs from the original application, an amended application can be filed but must be done within 45 days of formal review of the application. He then presented the Board with two examples of case law. The Appeal of Clipper Home was an example of where the Board can impose conditions, which required Clipper Home to comply with the Medicaid rates submitted in its application. The Appeal of Catholic Charities was an RFA for 82 beds. The Board then granted CONs to two applicants, not Catholic Charities and the Court ruled that the Board had not notified the parties of a possible change in the process. He went on to say that He-Hea 906.01 which was cited by Laconia Genesis states that more than one application can be approved; however the parameters of the process cannot be changed in the middle of such process. Attorney Eills wrapped up by stating that Golden View wants to be sure the rehearing is based on the original applications since the Board has nothing else to evaluate as neither party has submitted amended applications for less than 33 beds.

Attorney Lucy Hodder and Mr. Arthur O'Leary, Regional Vice President of Operations, then testified on behalf of Laconia Genesis. Attorney Hodder stated that Laconia Genesis believes the Board did not consider the needs of the community in granting the CON to Golden View and that the opportunity to split beds was known from the beginning of the process. Mr. O'Leary stated that he asked at the prehearing conference about whether beds could be split.

Attorney Hodder stated that as for the applications not being submitted for less than 33 beds, the Laconia Genesis application would require only minor information for the staff to review since their plan has two separate additions and they were thinking of the possibility of the beds being split from the beginning.

Mr. Vailas asked if Laconia Genesis has the ability to take all 33 beds and Mr. O'Leary responded that yes they did since the original application was for all 33 beds.

Ms. Crory asked why Laconia Genesis did not amend its application at any point throughout the process. Attorney Hodder stated that Laconia Genesis would have liked the 33 beds but would have been willing to allocate and that Golden View was not willing to discuss this possibility.

Ms. Almeda stated that in the original hearing there were some complicated financial issues to work through on the fly (reimbursement, etc.) and did not feel that the Board had the information to

allocate beds and to determine what the impact would be. She stated that the Board was pushed to make a decision since the 120-day limit was approaching and they had to do something or both applications would be denied. When she voted for reconsideration, she understood the Board would re-look at beds, reimbursement, etc. and the prehearing conference would determine what would be discussed.

Mr. Chase agreed with Ms. Almeda, stating he thinks the option of splitting the beds has always been out there and the Supreme Court decision is not clear. He stated that he believes the motion should be denied, that the Attorney General should be consulted for an opinion, then proceed accordingly.

Attorney Eills stated that Golden View followed the process to the letter and that Laconia Genesis didn't file their objection in a timely manner since they filed on the 11<sup>th</sup> day when they only had 10 days to file. He also stated he didn't believe the Board had the information to determine the impact of splitting the beds.

Ms. Susan Palmer-Terry then stated that Golden View had the right to see a concrete proposal by Laconia Genesis. If they were serious about splitting the beds it would have forced Golden View to review its own business plan.

Ms. Carrier stated that the Board had 60 days to make a decision on the motion filed on November 29, 2007 which would be January 29, 2008. She indicated that the Board could postpone its decision and seek consultation with the Attorney General if warranted. Ms. Crory stated it is important that the Board act under the statutes and the rules which govern it.

Ms. Wheeler made a motion to accept the motion before the Board to only hear the applications as originally submitted. Ms. Crory seconded the motion. Ms. Wheeler, Ms. Crory, Mr. Sochalski and Ms. Griffin voted in favor. Mr. Vailas, Ms. Almeda, Mr. Chase and Mr. Stanton voted against the motion, causing a split vote, and by statute the motion fails.

## **9. Other Administrative Business**

- ☐ Ms. Carrier stated that the next meeting of the Board would take place on January 17, 2007. The agenda will include the Northeast Rehabilitation Hospital Reconsideration Hearing.
- ☐ The Acute Care Subcommittee met on December 11, 2007 and is making good progress.

Chair Vailas then adjourned the meeting at approximately 12:30 p.m.

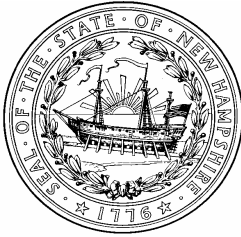
Signature: \_\_\_\_\_

Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board: \_\_\_\_\_

Date

## HEALTH SERVICES PLANNING AND REVIEW



January 17, 2008

10:00 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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**Meeting called by:** Chair Nicholas Vailas      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Ms. Beth Ann Roberts, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz

**Staff Members:** Ms. Cindy Carrier, Ms. Lauren LeBrun and Mr. Jeffery Peck

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Chair Vailas opened the meeting at 10:10 a.m.

### 1. Consent Agenda

- ❑ **Approve December 13, 2007 Board Meeting Minutes**

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if the consent agenda item required any further discussion. If so, it would require removal from the consent agenda.

Ms. Wheeler made a motion to accept the consent agenda. Ms. Crory seconded the motion. Ms. Roberts abstained from voting as she was absent from the December 13, 2007 meeting. The consent agenda was approved by the nine (9) remaining Board members.

### 2. Adopt He-Hea 100 Board Organizational Rules

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier stated that the He-Hea 100 Board Organizational Rules have now been approved by JLCAR. The rule is now eligible for adoption for 8 years.

Ms. Almeda made a motion that the Board adopt the He-Hea 100 Rule. The motion was seconded by Ms. Crory. All Board members voted in favor and the motion, and the motion was unanimously approved.

### **3. Adopt He-Hea 200-300, Board Practice and Procedures Rules**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier stated that the He-Hea 200-300 Board Practice and Procedure Rules have now been approved by JLCAR. The rule is now eligible for adoption for 8 years.

Ms. Griffin made a motion that the Board adopt the He-Hea 200-300 Rule. The motion was seconded by Mr. Wojtkiewicz. All Board members voted in favor and the motion, and the motion was unanimously approved.

### **4. Rehearing: Northeast Rehabilitation Hospital, CON REHAB 07-04**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier introduced this item stating that the Board voted to hold a reconsideration hearing on the Certificate of Need granted to Northeast Rehabilitation Hospital (NRH). A prehearing conference was held on December 6, 2007 and Ms. Carrier outlined the prehearing order for the Board.

The following testimony was provided by the Petitioners (Attorneys John Doyle & Brian Quirk representing Sunbridge, Edgewood Center, NH Catholic Charities; Mr. Michael Lehrman, NH Catholic Charities; Ms. Patricia Cummings, Edgewood Center; and Attorney Kenneth Rubinstein, representing Whittier Rehabilitation Hospital).

Attorney Quirk handed out a 'shorter version' of the handouts originally presented in compliance with the prehearing order. Attorney Doyle proceeded to brief the Board on the information.

Attorney Doyle stated that the RFA issued on January 2, 2007 used the existing formula and further assessments should have been conducted in July 2005 and July 2007 as per the governing rules. The formula was last run in 2003. He reviewed the chart showing a decline in IRF discharges since 2005 and based on NH experience the 33 beds are not warranted. He stated that NRH does not comply with the CMS '75% rule', and a CON should not have been granted since a final site has not been chosen. He also questioned NRH's facility as a remote location and whether such facility would be considered as free standing for federal reimbursement.

Mr. Lehrman then testified that he was representing St. Ann Nursing Home in Dover and he is concerned about the impact on nursing facilities in the area, particularly the ability to recruit staff and the overlap of services between SNFs and rehab facilities.

Mr. Vailas asked if Mr. Lehrman knew what the financial impact would be as a percentage of revenue for the overlap of patients. Mr. Lehrman stated it would be approximately 6% of days and 12% of revenue.

Mr. Lehrman then testified that many towns in southern part of the region are closer to Salem and many in the northern part are closer to Concord and he is doubtful that NRH will achieve their proposed volumes. In addition, there have been declining volumes at both HealthSouth in Concord and Northeast Rehab in Salem since 2005. He stated that discharges to IRFs from seacoast hospitals have decreased 10% per year.

Mr. Lehrman also questioned the cost effectiveness of care since nursing home facilities charge approximately \$450 per day for an average length of stay between 25-30 days totaling \$11,200 - \$13,500, while IRFs would charge between \$22,500 - \$28,400 per case.

At this time Ms. Patricia Cummings of Edgewood Center testified that the Board should consider that two nursing facilities have closed in the past 2 years, one more is closing in April 2008 and another is filing for Chapter 11 bankruptcy. She does not see this as a census issue since the beds could be filled regardless; however 40% of rehabilitation patients could be cared for in SNFs. The revenue that the nursing facilities will lose will have to be made up elsewhere. She believes that the granting of the Certificate of Need is detrimental to the State budget.

At this time, Attorney John Malmberg, Mr. John Prochillo, Administrator, NRH and Ms. Jane Snecinski, Noblis Center for Health Innovation, came before the Board to testify on behalf of NRH.

Attorney Malmberg stated that the parties requesting the rehearing have the burden of convincing the Board to revise its decision. He addressed the four points raised by the petitioners.

- 1) Need to revisit the formula every two years – Attorney Malmberg stated this was not true. The formula doesn't need to be revisited unless or until the rule is revisited.
- 2) The facility will NOT be a freestanding facility – This is an incorrect statement. The facility will be freestanding; however, it will share a provider number with the Salem facility.
- 3) Lack of location – The exact location does not have to be precisely specified as long as it is in the service area.
- 4) Number of referrals is erroneous – the numbers are all neurological discharges not just the IRF discharges.

Attorney Malmberg stated there are clear differences between services provided in a SNF versus a rehab facility and that medical necessity distinguishes the facilities. He then pointed out that the demographics in the region are changing, with an aging population coming to the Seacoast which will increase the availability of patients.

Mr. John Prochillo then made his presentation, focusing on the differences between SNFs and IRFs in terms of access, population and aging. An IRF has a hospital level of care with physician to physician interaction and the admitting physician must certify the need for the care. He stated that nursing homes and rehab facilities co-exist cooperatively in other areas of the State.

Mr. Vailas asked how patients get into a rehab facility, and Mr. Prochillo responded that an acute care hospital physician must write an order for the admission. Medicare will deny payment for incorrect admissions.

Mr. Prochillo then reviewed how regionalization was built into the rule during rulemaking and how regionalized bed need was developed to increase access for Seacoast residents. He stated that the population growth was estimated to be 6% by 2010 and that the petitioners never mentioned this in their petitions. He also stated that the petitioners do not discuss the more compelling statistics of the aging population in the region. Nursing homes receive 10 times the number of patients that IRFs receive and they will go from 14% to 15% of the patients by 2010. Also, 80% of discharges from IRFs are sent home while 15% require further care in nursing homes.

Ms. Jane Snecinski testified that Medicare used to be a cost based payment system, and now uses a PPS type of payment system. She stated that there are different levels of reimbursement for different levels of care. Approximately 90% of SNF referrals come from Medicare recipients while IRFs get 70% of referrals from Medicare. She also testified that the Board's need formula is in line with occupancy rates in the United States.

Mr. Vailas asked what the utilization rates were in non-CON regulated states. Ms. Snecinski stated that utilization is lower in those states because more beds are available but empty. Ms. Almeda asked what percentage of patients were discharged home from IRFs and Ms. Snecinski replied 80%.

The following individuals testified in opposition of the project: Ms. Catherine Devaney, Healthsouth; Mr. John Poirier, NHHCA; Mr. Don Rabun, LTCO (via letter).

Individuals testifying in favor of the project: Dr. Clinton Frederick Miller, neuro-surgeon; Mr. Craig Whitney, Wentworth-Douglass Hospital (WDH); Ms. Kathy Anson, WDH; Mr. Steven Wade, Brain Injury Assn. of NH; Ms. Carol Early, RN, Portsmouth Regional Hospital; Ms. Jeanne Vidler, RN, Exeter Hospital; Ms. Lisa Hanson, Ms. Judith Ryan and Ms. Susan Gordon, T. Krumples Brain Injury Foundation, Portsmouth; Mr. Mark Mason, Frisbie Memorial Hospital.

The Petitioners then came forward again to provide summation of the previously given testimony. Attorney Rubenstein also stated that Whittier Rehabilitation was less than 30 minutes away in Haverhill, MA and there is no 'iron curtain' between state borders. Mr. Lehrman stated that there are 300 people per year in the seacoast using IRFs and he did not feel that was worth the cost to the State and using up human resources at the proposed facility.

Attorney Malmberg gave summation for the applicant stating that it is irresponsible to ignore the projections made and to think the overlap is 40%. He stated that nursing homes have higher Medicaid populations because of patients with no hope of changing their status and IRFs have a small amount of Medicaid with 70% of patients having commercial payors and less than 30% having Medicare.

Attorney Malmberg also stated that the need formula was determined in 2003 and at that time the decision was to regionalize. This is not the place to question that decision.

Mr. Prochillo reiterated that all four seacoast hospitals support the project and there are 10 times the patients admitted to nursing homes versus IRFs. The aging and growing population will mean more patients for everyone.

Chair Vailas then closed the public hearing and the Board proceeded to deliberation on the issue. Ms. Crory made a motion that the HSPR Board, having reconsidered its September 20, 2007 decision hereby upholds its original decision. Mr. Sochalski seconded the motion. All Board members voted in favor and the motion was unanimously approved.

## **5. Discuss SB 114 relative to CON Expedited and Exempt Process**

**Discussion:** Ms. Carrier introduced this item and stated that there was a bill being introduced that would exempt outpatient facilities and expedite any non contested applications. Board discussion ensued on the ramifications of the bill.

Ms. Wheeler made a motion to inform the sponsors of the legislation that the Board will not support the legislation changes in SB114 but would support any changes in regard to an expedited process be handled through rulemaking. Ms. Almeda seconded the motion. All Board members voted in favor and the motion was unanimously approved.



**6. Other Administrative Business**

- ❑ Ms. Carrier stated that the next meeting of the Board would take place on February 21, 2008. The public meeting will begin at 10:00 am in order for the Board to have 30 minutes to discuss the Region 3 information received at today's meeting.
- ❑ The Acute Care Subcommittee will meet on January 31, 2008.
- ❑ The He-Hea 2100 LTACH Rule will be heard at JLCAR tomorrow and should receive conditional approval so the Board can adopt the rule.
- ❑ SB 505 temporarily lifts moratorium on nursing home beds.
- ❑ The nursing home Bed Need Formula has been run and shows that 5 counties reflect a need for additional beds, but the moratorium remains in place.
- ❑ A brief discussion ensued regarding the Region 3 LTC applications, the Board will meet for ½ hour prior to the 2/21/08 meeting to discuss the Attorney General's opinion on the issue.

Chair Vailas then adjourned the meeting at approximately 2:35 p.m.

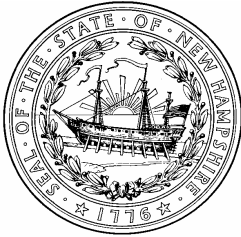
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Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



February 21, 2008  
10:00 a.m.  
Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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<b>Meeting called by:</b>	Chair Nicholas Vailas	<b>Note Taker:</b> HSPR Staff
<b>Type of meeting:</b>	Certificate of Need - Board Meeting	
<b>Attendees:</b>	Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Ms. Beth Ann Roberts, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz	
<b>Excused:</b>	Ms. Erin Almeda	
<b>Staff Members:</b>	Ms. Cindy Carrier, Ms. Angel McFetridge and Mr. Jeffery Peck	

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Chair Vailas opened the meeting at 10:10 a.m.

### 1. Consent Agenda

- ☐ Approve January 17, 2008 Board Meeting Minutes
- ☐ Approval – Findings of Reconsideration, Northeast Rehabilitation Hospital, CON REHAB 07-04, \$15,641,000
- ☐ Parkland Medical Center – Petition for 6-month Extension on CON AC 02-05
- ☐ Webster at Rye, NSR Petition for Building Addition, \$1,047,270

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if any consent agenda item required any further discussion. If so, it would require removal from the consent agenda.

Ms. Wheeler asked if Ms. Almeda wanted the minutes corrected based upon her email to the Board. Ms. Crory clarified that Ms. Almeda was referring to the minutes of May 2007 and that it would be too late to correct.

Ms. Wheeler then made a motion to accept the consent agenda. Dr. Sochalski seconded the motion. The consent agenda was unanimously approved.

**2. Webster at Rye, NSR Petition to Transfer 20 Beds from Exeter Healthcare, \$141,272**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier explained that this project was not on the consent agenda since it required a letter from Exeter Healthcare confirming the transaction; this has now been received. She acknowledged Ms. Almeda's concern about this being identified as a separate project from the Webster at Rye consent agenda item, but explained that the two projects were substantially different and the record needed to reflect such. She stated that even if the two projects were combined, the total cost would be below the statutory threshold.

Ms. Griffin asked how many beds will be left at Exeter. Mr. Tom Argue, Administrator for Webster at Rye, came forward and testified that there are currently 30 – 40 beds in use. Mr. Peck added that they are licensed for 109 and this would drop to 89.

Mr. Wojtkiewicz motioned to approve Webster at Rye's NSR petition to transfer 20 beds from Exeter Healthcare at a cost of \$141,272. Ms. Roberts seconded the motion and this agenda item was unanimously approved.

**3. Approve Conditional Response of Rule He-Hea 2100, LTACH**

**Discussion:** Chair Vailas asked Mr. Peck to introduce this item. Mr. Peck gave a brief introduction stating that at the January 25<sup>th</sup> JLCAR meeting, JLCAR approved the conditional response of He-Hea 2100, LTACH rule and the Board is adopting this response copy of the rule today.

Dr. Sochalski made a motion that the Board adopt the conditional response for the He-Hea 2100 Rule. The motion was seconded by Ms. Crory. All Board members voted in favor and the motion, and the motion was unanimously approved.

**4. Dana Farber/New Hampshire Oncology-Hematology – Petition for Exemption to Lease Space at Elliot Londonderry Medical Building**

**Discussion:** At this time, Mr. Lawrence Shulman, M.D. from Dana Farber Cancer Institute, Mr. Christopher Jedrey, Esquire, from McDermott, Will & Emery, LLP, representing Dana Farber, Ms. Lucy Hodder, Esquire, from Rath Young & Pignatelli, PC, representing NH Oncology Hematology (NHOH) and Mr. Danny Sims, M.D., President of NH Oncology Hematology, and Mr. Peter Briccetti, M.D. from NH Oncology Hematology came forward to testify. Attorney Hodder reviewed the petition for the Board stating that NHOH would be leasing space from Elliot Hospital and that they would become a medical office. She stated that NHOH is an independent practice based in Hooksett and that they collaborate with regional providers to make services available in the community. She stated that the statute exempts physicians' offices under RSA 151 – C:13, I (a) and that they are not required to have a facility license. Attorney Hodder stated that they submitted an equipment list and that the cost will be under \$400,000. Dr. Briccetti from NH Oncology Hematology provided background on NHOH stating that they have been in practice since 1976. Chair Vailas asked Dr. Briccetti if they still planned to practice at Parkland Medical Center. Dr. Briccetti answered not in the long term. Chair Vailas asked if this was a collaborative agreement with Dana Farber. Dr. Briccetti stated that it was. Ms. Griffin asked if they would have to add equipment to accommodate the people coming in from Boston. Attorney Hodder stated that they wouldn't, and that they use the same type of equipment for all physicians. Dr. Shulman stated that 85% of cancer patients are treated in community facilities and that this collaboration with NHOH is an attempt to further bringing cancer care to the community. He stated that they don't do surgery

or radiation so they wouldn't be needing a lot of high-tech equipment. He stated that 1,000 patients in Southern NH were being treated by Dana Farber and this facility will make access more convenient. Ms. Griffin asked if patients would have the option to go to Londonderry or Boston. Dr. Shulman answered that yes the patient would have that choice. Ms. Crory asked what kind of certification the facility will have and what procedures will exist in case of an emergency. Attorney Hodder stated there is no specific certification for the facility and that the physicians have their own certification operating under their personal licenses. Attorney Jedry added that they would be certified by the Joint Commission (JCAHO). Dr. Shulman stated that information technology will be in Londonderry and the Department of Patient Safety monitors safety of patient care at all locations. Dr. Briccetti stated that NHOH has strong policies and procedures for safety. Ms. Roberts asked what the core difference is between the Londonderry facility and treatment at Parkland. Dr. Briccetti stated that there will be opportunity to provide extra services. Ms. Roberts stated that Elliot has said it isn't trying to compete with area hospitals, but this removes services from Parkland. Dr. Briccetti stated that Parkland has chosen to work with Lahey and that NHOH has patients' interests in mind. Ms. Roberts asked who will bill for services. Attorney Hodder replied that Dana Farber would. Ms. Roberts asked if reimbursement will be negotiated with Dana Farber. Attorney Hodder replied yes. Ms. Wheeler asked if NHOH could partner with Dana Farber at Parkland. Attorney Hodder answered that new space is the best answer to provide the best services to the patients. Ms. Roberts stated that it is unfortunate that Dana Farber will be the billing entity; this could limit access to services for some patients and they won't be covered at the same level as a NH provider. She stated that this is a barrier that insurance companies will have to overcome.

Chair Vailas then asked for any public testimony of this agenda item. At this time, Ms. Ellen Mcann from Anthem came forward to testify. She stated that this has been characterized as a physician's office with minimal equipment, but will be billed by Dana Farber and that she agrees with Ms. Roberts that billing arrangements could be an issue. Dr. Shulman stated in response that 1,000 patients that are insured in NH are now getting care at Dana Farber and local care may actually be less of a burden. Chair Vailas stated that the Board wants to assure cost effectiveness. Ms. Roberts voiced her concern that these patients making the choice to go to Dana Farber will still be doing this and that she is concerned that all services will be billed by Dana Farber when most services aren't being performed by them. Attorney Hodder stated that regulatory issues forced this arrangement.

Ms. Maureen Smith, from Parkland Medical Center then came forward to testify. She stated that Parkland has enjoyed the services of NHOH. She stated that many patients have also been served well by Dana Farber. She added that she's disappointed that they are leaving Derry. Ms. Smith added that Parkland's decision to work with Lahey was made after learning NHOH would not continue providing services at Parkland.

Mr. John Michaels, came forward as a Londonderry resident and concerned citizen to testify. He stated that he is currently a patient at Dana Farber and loses a day to go to Boston for an appointment or treatment that would take a half hour if in NH. He stated that with this facility he'd be able to get a trial or advanced treatment. He closed by saying he was in favor and urged the Board to take into consideration the people who have to deal with this.

Hearing no other testimony, Chair Vailas asked for a motion. Ms. Crory then motioned to approve the petition for Exemption to Lease Space at Elliot Londonderry Medical Building for Dana Farber/NH Oncology Hematology stating that it is exempt under RSA 151-C:13, I (a). Mr. Chase seconded the motion. All Board members voted in favor, and this agenda item was unanimously approved.

At this time, Chair Vailas declared a five-minute break. He called the meeting back to order at 11:20 am.

**5. Petitions to Sever the 2007 Acute Care Applications – Mary Hitchcock Memorial Hospital, AC 07-06/Valley Regional Hospital, AC 07-07/Elliot Hospital, AC 07-08/LRGHealthcare AC 07-09/Wentworth Douglass Hospital, AC 07-10**

**Discussion:** Mr. Peck introduced this agenda item. He stated that petitions to sever have been received from 4 out of the 5 applicants and that Elliot Hospital provided an asserted motion for severance. Mr. Peck stated that Formal Review of the applications ends on April 24<sup>th</sup> and that if all of the applications stayed batched, the Board would have to hear all of the applications before voting. He stated that no application impacts any other and also that the Board could possibly hold some of the hearings in March and some in April.

Ms. Wheeler asked if the Board didn't sever, then would they have to hear all before voting on any one of them? Ms. Carrier stated yes. Ms. Wheeler then asked if the applications were severed if the Board could wait until they heard all to vote. Ms. Carrier answered that the Board could postpone the vote if they wanted to but that they could not base their decision on previous hearings – each application would have to be approved on its own merits. Ms. Crory stated that the staff recommended that there is no conflict between the applicants and severing would be more efficient. Ms. Wheeler asked if any applicant objected to the severance and Ms. Carrier stated no.

Mr. Wojtkiewicz made a motion to sever the 2007 Acute Care Applications as identified. Ms. Crory seconded the motion. All Board members voted in favor and the motion was unanimously approved.

**6. LTC Region 3 Reconsideration – Joint Motion of the Parties for Approval of the Process for Reconsideration and Resolution of Pending Issues**

**Discussion:** Mr. Wojtkiewicz recused himself from this agenda item. Ms. Carrier provided a brief introduction of this agenda item. She stated that a joint motion has been submitted by Golden View and Laconia Center relative to the Reconsideration for the Region 3 RFA for long term care beds. She stated that a copy of this submission was also previously emailed in the event that it needed to be weighed against the private Board discussion regarding the AG's advice that was held before the Board meeting. She clarified that the Board can accept or reject any or all parts of this motion, or incorporate it into any pre-hearing conference to be scheduled on this Reconsideration. Ms. Carrier then stated that HSPR staff supports the need for additional documentation from the parties as well as some time, albeit abbreviated, to perform its customary staff analysis of the proposal. She stated that in no way does the Board have to view this documentation as the final approval of the proposal; rather, it seeks to establish some agreed-upon process for the hearing. She concluded that the final decision to approve the new proposal rests upon the final vote of the Board at the conclusion of the hearing.

At this time, Mr. Andrew Eills, Esquire, representing GoldenView and Ms. Jeanne Sanders from GoldenView, along with Ms. Lucy Hodder, Esquire, representing the Laconia Center and Mr. John Allard from Laconia Center came forward to testify. Attorney Eills stated that the agreement between GoldenView and Genesis is new evidence and that they proposed several items that would be submitted for review. Attorney Hodder stated that this is a two step process, the first step being voting to rehear; this has been done, and two, to provide additional documentation and hold

the rehearing. She added that the parties want to be clear on the process. Ms. Crory stated to the parties that it seemed as though they are trying to tell the Board what to do. Attorney Eills replied that that wasn't the case, they just want to be clear on the documentation to present as discussed with Ms. Carrier. He added that they have no intent to make the Board do anything against the statute. Ms. Crory stated that she voted in favor of GoldenView and against reconsideration. She then asked Ms. Sanders if she would go forward with the original project should the Board uphold its original decision to grant the CON to GoldenView. Ms. Sanders replied that she would have to bring this to her Board but that she assumes they would. Ms. Crory voiced her concern that the parties are using the reconsideration process to force the Board to take action against its rules. Attorney Hodder stated that GoldenView came to Genesis to discuss how best to serve the community. She added that the Board can now decide to accept new evidence that shows the new arrangement best serves the community.

Mr. Chase asked if the Board had to take action on the joint motion. Ms. Carrier stated that the Board can accept it, deny it, do nothing with it, or use it in the prehearing conference. Attorney Hodder stated that she doesn't know what the Attorney General said and that she wants the Board to consider the agreement of the parties before the applicants make an effort to go forward, and present new evidence, etc. Ms. Crory stated that the majority of the Board voted to reconsider; if this vote was in error it could be challenged in court. Attorney Hodder stated that the Board doesn't have to overturn the original decision after the hearing and can order and accept additional evidence. Chair Vailas stated that the majority of the Board felt there was confusion, that things were hurried, and that the beds could be lost if a decision wasn't made. Attorney Eills stated that GoldenView was disappointed that a rehearing was granted but it forced them to review the options and what actions the Board could take. He stated that GoldenView brought the matter to their Board and then approached Genesis to discuss options. He stated that today they are asking for guidance and that they want a prehearing conference and a public hearing. Ms. Crory stated that the attorneys don't have the AG's statement and she voiced that she would be willing to share if the rest of the Board agrees. Chair Vailas stated that he would need guidance on that. Ms. Roberts asked if the Board had the right to release the AG's opinion. Ms. Carrier stated that it is marked confidential and would need permission from the author.

Ms. Wheeler stated that she would assume that splitting the beds better meets quality and affordability. Attorney Eills and Attorney Hodder both agreed. Ms. Crory asked what paragraph "B" at the end of the petition meant. Attorney Hodder stated that they wanted an opportunity to present a new resolution to the Board. She then laid out the 3 options: 1. the Board could stand by its original decision; 2. grant all beds to Genesis; or 3. agree to split the beds based on the new evidence. Mr. Chase stated that he was against sharing the AG's opinion and stated that the Board should refer the petition to a prehearing conference. Attorney Eills stated that they have no intention to tell the Board how to conduct its business. Ms. Crory again referenced paragraph "B" in the petition, stated that subject matter doesn't come up in prehearing conference and suggested removing "as set forth in this motion" from the language therein. Attorney Eills stated that both parties agree on the documentation to be presented. Attorney Hodder read He-Hea 208.08 into the record.

Mr. Henry Lipman from LRGH stated that he would like the 3<sup>rd</sup> option to at least be considered. Ms. Crory asked him if the 3<sup>rd</sup> option was against the law, would he still support it. Mr. Lipman replied that he would not want to violate the law and that he doesn't know what the AG said.

After further discussion, the Board decided not to take any action on this agenda item.

## 7. **SB114 Update**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier gave the Board a brief update and stated that an LSR (Legislative Service Request) has been submitted for a new bill. She asked Ms. Roberts if she could add anything. Ms. Roberts stated that she went as an interested party to a work session on the bill, not as a representative of the Board. She left uncertain and hasn't seen the latest language. Chair Vailas asked if they were proceeding with legislation and Ms. Roberts replied that it seemed that way. Ms. Wheeler stated that these changes should be made through rulemaking. Chair Vailas agreed. Ms. Roberts stated that there were three tiers to SB114, such as exemptions, expedited review, and urgent care requiring a CON if over the threshold. Ms. Wheeler mentioned that one concern is the long time period between RFA's and that they would be able to apply when in need rather than waiting for the Board to open the RFA.

Chair Vailas declared that this be an agenda item at the next meeting of the Board. Ms. Roberts requested that the staff supply Chair Vailas' letter to the Board members again as well.

Ms. Crory then revisited agenda item 6 and requested confirmation that no action was taken on Attorney Eills and Attorney Hodder's petition and that there was nothing binding upon the Board. She asked if the Board should request the Attorney General back to discuss releasing the confidential document and for more clarification. Mr. Chase stated that the document was written before the meeting with the Attorney General's office and he wondered if it would be written the same way now. Chair Vailas agreed and requested the staff bring the Attorney General's office back to speak with the Board again.

## 8. **Other Administrative Business**

- ❑ Ms. Carrier stated that the next meeting of the Board will take place on March 20, 2008.
- ❑ She stated that the Acute Care subcommittee is applying the finishing touches to the amended Acute Care rule, He-Hea 1000. It is anticipated that the rule will be submitted for Board approval at the March 20, 2008 meeting.
- ❑ A draft copy of the proposed He-Hea 600 MRI and He-Hea 1900 ASC rules for re-adoption has been sent to the electronic mailing list for comment. These rules expire in May 2008.
- ❑ **Welcome Back** to our secretary Angel McFetridge who has been on sick leave. Angel has also been recently promoted to an Administrative Secretary for HSPR!

Chair Vailas then adjourned the meeting at approximately 12:30 p.m.

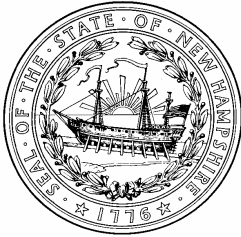
Signature: \_\_\_\_\_

Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board: \_\_\_\_\_

Date

## HEALTH SERVICES PLANNING AND REVIEW



March 20, 2008

10:00 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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<b>Meeting called by:</b>	Chair Nicholas Vailas	<b>Note Taker:</b> HSPR Staff
<b>Type of meeting:</b>	Certificate of Need - Board Meeting	
<b>Attendees:</b>	Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz	
<b>Excused:</b>	Ms. Beth Anne Roberts	
<b>Staff Members:</b>	Ms. Cindy Carrier, Ms. Lauren LeBrun, Ms. Angel McFetridge and Mr. Jeffery Peck	

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Chair Vailas opened the meeting at 10:10 a.m.

### 1. Consent Agenda

- ☐ **Approve February 21, 2008 Board Meeting Minutes**
- ☐ **Catholic Medical Center – Change of Scope for AC 06-03, \$480,733.75**

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if any consent agenda items required any further discussion. If so, it would require removal from the consent agenda.

Ms. Wheeler then made a motion to accept the consent agenda. Ms. Griffin seconded the motion. Ms. Almeda abstained from the vote and the consent agenda was unanimously approved by all of the remaining Board members.

### 2. Determine Issuance of April 1, 2008 ASC RFA

**Discussion:** Chair Vailas asked Mr. Peck to introduce this item. Mr. Peck gave a brief introduction, stating that the April 1, 2008 RFA for Ambulatory Surgical Centers was due to be issued and that the Board must make a finding of need prior to issuing such RFA. To support the finding of need, HSPR staff requested a letter of intent from any existing ASC and acute care hospital identifying any projects contemplated for this RFA. He added that public notice was also made as part of the Board agenda an via and electronic mailing list. Mr. Peck stated that, to date,



LRGHealthcare has responded, and is planning an expansion to its ASC Hillside Medical Park in Gilford. Based on this letter of intent, the Board could make a finding of need to issue the RFA. Mr. Peck closed by stating that staff recommends the issuance of the April 1, 2008 RFA for Ambulatory Surgical Centers.

Mr. Wojtkiewicz made a motion to issue the April 1, 2008 ASC RFA based on the letter of intent received. Mr. Chase seconded the motion and this agenda item was unanimously approved.

### **3. Adopt He-Hea 2100, LTACH Rules**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this item. Ms. Carrier gave a brief introduction, stating that JLCAR approved the conditional response of He-Hea 2100, LTACH rule and the Board is formally adopting the rule today for it to be filed and made effective for a period of 8 years. She stated that because federal legislation has imposed a moratorium on reimbursement for any new LTACH facilities, it is unlikely that there would be any respondents to an RFA if one were issued.

Ms. Almeda made a motion that the Board adopt the He-Hea 2100 LTACH Rule. Ms. Crory seconded the motion. All Board members voted in favor of the motion, and the motion was unanimously approved.

### **4. Approve Initial Proposal, He-Hea 600 MRI Rules**

**Discussion:** At this time, Chair Vailas welcomed Mr. Robert Mach, Director of Diagnostic Imaging at Littleton Regional Hospital to comment on the He-Hea MRI rules. Mr. Mach came forward and stated that he has requested that the fixed unit threshold be lowered from 1,800 to 1,500. He stated that he was previously involved with the MRI Subcommittee and that it would make financial sense to lower the threshold amount. Ms. Crory asked what the financial consideration is for lowering the threshold. Mr. Mach replied that he didn't have the exact dollar amount. He added that per GE (General Electric) it would cost \$1.5 million to install a fixed unit. Littleton now pays \$600,000 to \$650,000 for mobile services and a fixed unit would pay for itself in less than 3 years. Ms. Almeda commented that if people were uncomfortable with lowering the threshold across the state then the Board could incorporate a different threshold for North Country hospitals. Attorney Lucy Hodder asked if there would be a subcommittee and Chair Vailas replied that there would be just a public hearing. Ms. Almeda then asked if it would be better to table this agenda item and have an informational meeting, then prepare an initial proposal. Chair Vailas stated that he would prefer to move to a public hearing and make minor changes at that time. Ms. Carrier added that the rule would expire in May. She added that staff could add the lower threshold amount to the initial proposal.

Ms. Wheeler made a motion to change the threshold amount to 1500 for the He-Hea 600 MRI Rules. Ms. Griffin seconded the motion. Ms. Almeda then stated that she would rather hear from others at the public hearing for and against before making the change. Ms. Carrier stated that staff solicited comments and Mr. Mach was the only person to respond. The motion was approved with a vote of 8 to 1 with Ms. Almeda voting against the motion.

## **5. Approve Initial Proposal, He-Hea 1900 ASC Rules**

**Discussion:** Chair Vailas asked Ms. Lauren LeBrun to introduce this agenda item. She stated that some necessary changes have been made to this rule. She stated that to minimize the need for subcommittee meetings, HSPR staff undertook a review of the rule, and identified some needed changes. She stated that staff also solicited assistance from the members of our electronic mailing list and that to date, there has been no response. Ms. LeBrun stated that the Board could approve this rule whereupon a public hearing will be scheduled and then any person interested in the rule will then have an opportunity to provide testimony at that hearing.

Chair Vailas stated that he disagreed with some of the new requirements found in He-Hea 1903.04. Ms. Wheeler asked if they could be discussed at a public hearing or if they would go to a subcommittee. Chair Vailas stated that he would prefer to do it at the public hearing. Ms. Almeda asked if the Board would be going to annual issuance of the ASC RFA. Ms. Carrier stated that there isn't a high volume of applications.

At this time, Dr. Sochalski made a motion to approve the initial proposal for the He-Hea 1900 ASC Rules. Ms. Crory seconded the motion and it was unanimously approved.

## **6. Public Hearings**

- **Valley Regional Hospital, AC 07-07 \$22,448,000**

At this time, Chair Vailas opened the public hearing for Valley Regional Hospital ("VRH") of Claremont, NH. He explained to the Board that VRH and Mary Hitchcock Memorial Hospital had asked to change places on the agenda, which he allowed. Mr. Neil Castaldo, Esq., Hinckley, Allen & Snyder, LLP, Ms. Claire Bowen, President, VRH, Dr. Randy Knight, Emergency Department Chair, VRH, Ms. Marty Burns, VP of Patient Services, VRH, Mr. Steve Monette, CFO, VRH, Mr. Robert Porter, VRH-Board of Trustees, Mr. Steve Claman, Brensinger Architects, testified on behalf of Valley Regional Hospital.

Attorney Castaldo described the application as a life cycle project incorporating the following:

- New Central Plant to replace outdated and inefficient mechanical and electrical equipment (boilers, fire alarm systems, emergency power generator).
- Relocation of Materials Management with addition of a loading dock
- Relocation of the helipad
- New pad for mobile technology
- Centralized Admitting Department with private booth and space for family members
- Relocation of the Emergency Department with walk in and ambulance entrance, decontamination room, triage and treatment rooms, trauma room, observation rooms and psychiatric holding room.
- Renovations to Same Day Surgery with reconfiguration of space for recovery and support space
- Renovations to the Medical-Surgical Unit and ICU to include private rooms and bathrooms, additional space for equipment and families and support services

- Relocated and renovated Outpatient space to co-locate services such as radiology, laboratory, rehabilitation, pain clinic, cardiology clinic, oncology clinic and occupational health and all necessary operational and support space for such
- Relocation of administrative space to group departments into functional adjacencies (administration, human resources, volunteers, marketing and development).

Ms. Bowen stated that the financial foundation was in place to address the age of the plant, with three major areas updated: a new central plant, a new and expanded emergency department and an expansion of inpatient space for privacy and confidentiality. She explained that alternatives had been considered but were rejected as too costly, and that the option settled upon as the CON application provided the best alternative. The proposal provides a clear point of entry and consolidates ambulatory services. The ED will realize a 50% increase in space, and patient rooms will be converted to 21 private rooms. She closed her testimony by stating that the facility had not been updated since 1981 and the time was right for modernization.

Dr. Randy Knight then spoke briefly to the Board and explained that he has worked in the ED for 10 years. He has seen first hand increasing privacy concerns with patients and staff. He closed by stated that the entire medical staff supports the proposal.

Ms. Marty Burns then explained that the proposal targets two populations: those at risk to themselves, and those at risk to others. She explained that the project has focused on patient centered care, with increased family waiting areas, additional nutritional centers and educational space. Space has also been designed to accommodate pediatric and psychiatric populations. She stated that outpatient space is being moved closer to patient care space and that many benefits will result for hospital staff with rooms reoriented for medical administration and better bedside space.

Mr. Steve Claman provided a floor plan review for the Board, and Mr. Steve Monette discussed the breakdown of project costs and funding for the project, as well as the expected financial ratios as a result of the project. Board discussion ensued on the funding source (BFA versus HEFA) with Mr. Monette explaining that the hospital has a gold letter of credit and thus has opportunity to acquire a good financing plan. Ms. Wheeler inquired as to any private funding for the project. Ms. Bowen explained that the hospital expects 100% participation by its Board for its capital campaign and then will address its employees and the public. Ms. Griffin asked about privacy issues as a matter of federal law. Ms. Bowen replied that the construction of private rooms will address federal patient confidentiality laws. Mr. Wojtkiewicz stated that he was familiar with the hospital campus and asked about parking. Ms. Bowen that parking will be redistributed with the project with a net gain of 15 spaces.

There was no public testimony on the application and Chair Vailas closed the public hearing at 11:16am.

After Board consideration, Ms. Wheeler made a motion to approve the Valley Regional Hospital acute care application for \$22,448,000. Mr. Wojtkiewicz seconded the motion and this agenda item was unanimously approved.

- **Mary Hitchcock Memorial Hospital, AC 07-06, \$12,800,000**

At this time, Chair Vailas opened the public hearing for Mary Hitchcock Memorial Hospital. Neil Castaldo, Esquire, Mr. Stephen LeBlanc, COO, Dr. Allen Hartford, Acting Section Chief, Radiation Oncology, Ms. Gail Dahlstrom, VP Facilities Planning and Management, and Mr. Louis Shelzi, Practice Manager, Radiation Oncology testified on behalf of Mary Hitchcock Memorial Hospital.

Chair Vailas asked Mr. Peck to introduce this application. Mr. Peck stated that Mary Hitchcock Memorial Hospital (MHMH), located in Lebanon, NH, submitted a \$12,800,000 application to construct the concrete bunker necessary to house a proton accelerator for radiation therapy services. This accelerator was previously granted a Not Subject to Review (NSR) determination on March 15, 2007 under the equipment replacement provision of RSA 151-C:5, II (d). He stated that all checklist items had been resolved but for the recommended conditions.

Attorney Castaldo explained to the Board that the three conditions on the checklist have been accepted by the applicant for FDA approval of the equipment, proof of registration of the equipment with the Bureau of Radiological Health and the submission of training protocols for the unit before operation. He then stated that MHMH was here to complete what it started with the NSR for the proton therapy equipment. He did indicate that the construction estimate has just been revised and is higher than expected and that MHMH was currently looking at the costs to see what needs to be done as a result.

Mr. LeBlanc briefly testified and indicated that the proposal will enable the hospital to serve those who cannot get services now in NH but have to travel to Boston. He stated that the project is cost effective and the Board of Trustees supports it.

Dr. Hartford and Mr. Schelzi provided a background on proton therapy and its benefits to patients, especially pediatric patients. Dr. Hartford stated that he feels strongly that such therapy should be provided in an academic center such as MHMH and Dartmouth. Ms. Dahlstrom provided a floor plan review for the Board and explained the construction of the concrete bunker.

There was no public testimony on the application. Chair Vailas then closed the public hearing at 11:50am and moved to Board discussion on the application.

After Board consideration, Ms. Crory made a motion to approve the Mary Hitchcock Memorial Hospital application for \$12,800,000. Ms. Griffin seconded the motion and this agenda item was unanimously approved by all Board members.

## **7. He-Hea 100-300 Rules Update (Legislation)**

**Discussion:** Ms. Carrier introduced this agenda item. She stated that SB541 was handed out today and authorizes the Board to write rules for an expedited process. She then stated that the Initial Proposal of a rule for the expedited process needs to be submitted to JLCAR by January 2009. The bill also requires that the Association of Counties must nominate a county official to the Board. She stated that the bill passed the Senate and would then cross over to the House. Chair Vailas stated that this was not a law yet, that the Board could start on a rule in anticipation of the

law passing. He stated that there is already a subcommittee in place and that he would like to start that up again. Ms. Almeda and Dr. Sochalski both expressed interest to serve on the subcommittee. Ms. Carrier stated that she would contact the group for dates and times to meet.

Dr. Solchalski left the meeting at 11:55 a.m.

**8. Other Administrative Business**

- ❑ Ms. Carrier stated that the next meeting of the Board will take place on April 17, 2008. She added that there would be 3 public hearings that day.
- ❑ Ms. Carrier stated that a chronology of the Exeter Healthcare nursing beds has been completed and was included, as requested by the Board. Board discussion ensued regarding recent nursing closures, the reimbursement rate, the moratorium and reconvening the LTC subcommittee to discuss issues and gather information. Ms. Wheeler elected to rechair the subcommittee.
- ❑ Ms. Carrier stated that SB505 was declared Inexpedient to Legislature (ITL) and has thus been killed.

Chair Vailas then adjourned the meeting at approximately 12:08 p.m.

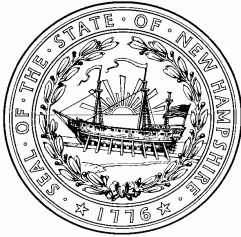
Signature: \_\_\_\_\_

Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board: \_\_\_\_\_

Date

## HEALTH SERVICES PLANNING AND REVIEW



April 17, 2008

9:30 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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**Meeting called by:** Chair Nicholas Vailas      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Ms. Erin Almeda, Mr. Robert Chase, Ms. Elizabeth Crory, Ms. Ruth Griffin, Ms. Beth Anne Roberts, Dr. Matt Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz

**Staff Members:** Ms. Cindy Carrier, Ms. Lauren LeBrun, Ms. Angel McFetridge and Mr. Jeffery Peck

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Chair Vailas opened the meeting at 9:31 a.m.

### 1. Consent Agenda

- ☐ Approve March 20, 2008 Board Meeting Minutes
- ☐ Findings of Fact – Valley Regional Hospital, AC 07-07, \$22,448,000
- ☐ Findings of Fact – Mary Hitchcock Memorial Hospital, AC 07-06, \$12,800,000
- ☐ Hanover Hill Nursing Home, Manchester, NH – Transfer of Ownership/Corporate Reorganization to Hanover Hill Health Care Center Services, Inc.
- ☐ Paradigm Clinical Associates, LLC – NSR Request for Ambulatory Surgical Center in Stratham, NH \$900,764

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if any consent agenda items required any further discussion. If so, it would require removal from the consent agenda.

Ms. Griffin then made a motion to accept the consent agenda. Ms. Almeda seconded the motion, and the consent agenda was unanimously approved by all of the Board members.

## **2. Determine Issuance of May 1, 2008 Megavoltage Radiation Therapy RFA**

**Discussion:** Chair Vailas asked Ms. LeBrun to introduce this item. Ms. LeBrun gave a brief introduction, stating that the May 1, 2008 RFA for Megavoltage Radiation Therapy was due to be issued and that the Board must make a finding of need prior to issuing such RFA. To support the finding of need, interested applicants must submit letters of intent to the Board by April 1<sup>st</sup>. Public notice was also made as part of the Board agenda and via an electronic mailing list. Ms. LeBrun stated that the state averages for numbers of patients and procedures are currently less than the standard. She then stated that to date, no letters of intent have been received and therefore, HSPR staff recommends not issuing the May 1, 2008 Megavoltage Radiation Therapy RFA.

Mr. Stanton made a motion to not issue the May 1, 2008 Megavoltage Radiation Therapy RFA as no letters of intent have been received. Ms. Roberts seconded the motion and this agenda item was unanimously approved.

Dr. Sochalski joined the meeting at this time.

## **3. Public Hearing, LRGHealthcare, AC 07-09, \$51,815,000**

**Discussion:** At this time Chair Vailas opened the public hearing for LRGHealthcare. Mr. Henry Lipman, CFO, Mr. Peter Walkley, Chief of Medical Staff and Ms. Ellen Wolff, VP of Patient Services, LRGH, Mr. Bradley Cardoso, Architect, DAI, and Ms. Susan Palmer-Terry, Consultant came forward to testify. Mr. Lipman stated that Lakes Region General Hospital proposed a dual project for two locations: a construction/renovation project at the hospital campus located in Laconia, NH, and a purchase/re-location project at the Gilford site where the ASC is currently located. Total cost of this project is estimated at \$51,815,000. He stated that hospital construction and renovation includes the following:

- New power plant to allow for upgrade/replacement of existing HVAC system, generator and mechanical system.
- New connector between the hospital and medical office building for safe transport of patients, materials and staff.
- New building addition to allow for:
  - New intensive and progressive care units
  - New Eldercare unit
  - Renovations to develop single patient rooms

Mr. Lipman went on to say that the above plans will be accomplished by the construction of a 5-story addition to be built off the southeast corner of the hospital next to the main entrance. He stated that this addition will connect the hospital and the medical office building. Three of the floors will be finished as part of this application, with the remaining two floors to be completed via a separate CON application in the future. These two floors (second and third) will be shelled as part of this project.

He then stated the second, or concurrent, part of the proposal contemplates the purchase of 3 new medical condominiums at the Gilford location, where the LRGH ambulatory surgical facility is currently located. LRGH will relocate and consolidate outpatient services at this site from the many areas in and around Laconia. LRGH plans to have the private developer build out space to accommodate the following:

- Rehabilitation unit including a therapeutic pool
- Occupational health
- Sleep laboratory
- Holistic health and pain management

Mr. Lipman stated that LRGH plans to fund the proposal via a combination of bonds and fundraising. He also noted that local interest and support for the project is positive.

Ms. Wolff spoke briefly regarding the Gilford facility at Hillside Medical Park, reviewing the plans for the 1<sup>st</sup> floor rehabilitation department and the 2<sup>nd</sup> floor stating that they would be combining Holistic Medicine, which is currently in Belmont, Pain Management, which is currently in Laconia and the sleep lab currently at Franklin Regional Hospital to the Gilford facility. Dr. Walkley stated that co-locating services at the site of the physician offices helps to coordinate care and gives the potential for cross training staff. He stated that the connector building will allow for doctors, families and patients to go between the hospital and MOB while staying indoors. He added that all of the rooms will be private to help meet HIPPA requirements, improve infection control and increase patient satisfaction.

Mr. Brad Cardoso then explained the floor plans for the Board. Board discussion ensued at this time. Chair Vailas asked how private rooms will increase efficiency. Mr. Lipman replied that they would have to staff up somewhat for this, but the financial projections show that the hospital can support this. Chair Vailas then questioned the \$10 million to be raised through fundraising and if it wasn't raised how LRGH would fund the project through operations. Mr. Lipman replied that a hospital often spends 1.2% of its asset base each year. He stated that they would re-prioritize these capital expenditures if necessary. Chair Vailas asked if they were concerned about the bond market. Mr. Lipman replied yes, and stated that the investment banker is still monitoring the situation. The project is scheduled to begin in the fall but could be deferred until next spring if necessary. Ms. Roberts asked Mr. Lipman how the hospital will serve its inpatients when moving outpatient services out of the hospital. Mr. Lipman stated that they already have small units in the hospital to serve the inpatients and that the outpatient services are moving from Belmont to Gilford. Ms. Roberts asked if the duplication of services are increasing costs. Mr. Lipman stated that it would cost more to move the services to the main hospital. Ms. Roberts pointed out the unused space in the project and asked why it wasn't being used for the outpatient services. Mr. Lipman replied that leaving soft space in the hospital allows for future expansions at a lower cost. Mr. Wojtkiewicz asked if the 13 beds in the eldercare unit were swing beds. Mr. Lipman answered that all the beds are available to use as swing beds, except for ICU, and that the hospital is trying to segregate space by patient type.

Ms. Crory asked HSPR staff if all of the outstanding issues had been resolved. Ms. Carrier replied that they have been. Ms. Almeda asked what services would be displaced at the Gilford condominiums by LRGH moving in. Mr. Lipman replied that the space would be newly constructed space. Chair Vailas questioned the issue with Anthem and the hospital contract. Mr. Lipman stated that it is the physician contract that is in dispute, that Anthem is the largest commercial payor for physicians and that LRGH will continue to work with Anthem to resolve the issue.

Hearing no public testimony, Chair Vailas closed the public hearing at 10:35 am. At this time, Ms. Wheeler made a motion to grant a CON to LRGHealthcare for AC 07-09 in the amount of \$51,815,000. Ms. Almeda seconded the motion and this agenda item was unanimously approved.

At this time Chair Vailas declared a 10-minute break. The meeting resumed at 10:45 am.



#### **4. Public Hearing, Wentworth-Douglass Hospital, AC 07-10, \$4,127,796**

**Discussion:** At this time Chair Vailas opened the public hearing for Wentworth-Douglass Hospital. Mr. Craig Whitney, Vice President Planning & Development, Mr. Peter Walcek, CFO, and Mr. Steve Wyrsh, Senior Director, Wentworth-Douglass Physician Corporation came forward to testify. Mr. Whitney provided an overview of the project stating that Wentworth-Douglass Hospital is seeking approval for construction of a portion of a new medical office building that it is constructing in the Town of Lee, which is a growing residential community in Strafford County. He stated that only the portion of the medical office building to be used for the provision of Hospital outpatient services is the subject of its CON application. He stated that it represents 35% of the building and the other 65% of the building will be occupied by physicians and other practitioners in private offices and therefore is exempt from CON review. He stated that WDH understands and accepts the stipulation from the HSPR staff analysis that any services to be established in the medical office portion of the building, other than physician offices, are not construed to be approved by the Board unless or until reviewed as a matter of public record.

He went on to say that WDH concurs with all of the staff's findings, comments, and recommendations. He stated that the hospital's main goal with this project is to address community need for outpatient services. He stated that with this project patients will benefit from the medical offices and convenient access when they need walk-in primary care or diagnostic and rehabilitation services. Mr. Whitney then stated that the outpatient services provided at Lee will be operated as extensions or satellites of WDH under the same management and policies as the respective services offered at the Hospital. He stated that the outpatient services to be offered in Lee will be available to the general public and not limited to the patients of the medical offices in the building. He added that WDH accepts the condition attached to approval of this project as recommended by HSPR staff and agrees to supply proof of all licenses pertaining to this application. Mr. Whitney stated that since the site is located directly above an aquifer that provides drinking water for the Town of Lee, they have worked collaboratively to plan this project with State and Town officials for several years.

He stated that the walk-in primary care center is designed to provide unscheduled primary care services with no appointment needed and will be open extended hours from 7 am to 9 pm weekdays, 9 am to 5 pm on Saturdays and 9 am to 1 pm on Sundays and that imaging services will include diagnostic x-ray, ultrasound and CT services with direct access to an exterior mobile technology pad for mobile services such as MRI. Also, a lab will be provided. He added that rehabilitation services will include physical therapy and occupational therapy services including necessary gym facilities. Mr. Whitney then stated that a redundant data center, a small component of the project in terms of space, is a critical component in terms of emergency preparedness. Mr. Whitney stated that WDH services are available to all patients whether they are insured or uninsured at all of its service locations. The hospital contracts with the major managed care organizations, has a financial aid program and offers a 15% discount off billed charges for all self-pay patients. Mr. Whitney closed by stating that funds for this project will be provided by the Hospital's operating cash flow and funded depreciation, ample funds are available from these sources and there is no additional borrowing associated with this project.

At this time, Chair Vailas allowed for Board discussion. Ms. Wheeler asked Mr. Whitney if they would have to add on to the plant in Dover if they weren't doing this project. Mr. Whitney replied that the intent is to relieve the congestion at the hospital. Ms. Griffin questioned the water supply for the building asking if there was public water in Lee and protection relative to the septic. Mr. Walcek stated that there will be a deep water well, the septic is designed to protect the aquifer, that porous asphalt is designed to protect the aquifer and added that UNH has a test bed for this they

have been using for 15 years. Ms. Roberts asked how they would bill for services. Mr. Walcek stated that they would be hospital based. A lengthy Board discussion followed concerning the charges for hospital-billed services. Ms. Roberts commented that nearby Barrington has a similar facility and charges for services at that location as an office visit, and WDH could be taking patients from this facility.

Ms. Ellen McCahon came forward to provide public testimony. She stated that the relative reduction on the physician side is less than the increase on the technical side and it is not a wash.

Chair Vailas closed the public hearing at 11:10 am and recognized a motion made by Ms. Crory to approve Wentworth-Douglass Hospital AC 07-10 for \$4,127,796, with a condition that all licenses pertaining to the application be forwarded to HSPR staff. She further stated that the application met the criteria outlined in He-Hea 303.02 – He-Hea 303.09 and He-Hea 1003 - He-Hea 1004. Ms. Almeda seconded the motion and this agenda item was unanimously approved.

Ms. Roberts stated that she was voting in favor because it met the standards but wants disclosure of who is billing for services. She stated that the Board needs to discuss off-site services billing as a hospital. Chair Vailas stated that the threshold needs to be raised.

Chair Vailas recused himself from the Board meeting at this time for the next 3 agenda items, stating a conflict. He remained as a member of the audience. Ms. Almeda disclosed that Concord Hospital has a joint-venture agreement with Elliot Hospital for RT but since Concord Hospital is not involved with this project she felt it was not necessary for her to recuse.

## **5. Public Hearing, Elliot Hospital, AC 07-08, \$84,934,300**

**Discussion:** At this time Vice Chair Roberts opened the public hearing for Elliot Hospital. Mr. Doug Dean, President and CEO; Mr. Rick Phelps, MD, Senior Vice President, Medical Affairs; Mr. Rick Elwell, Senior Vice President and CFO; Mr. Dick Anagnost, President, Anagnost Companies; Mr. Gregory Baxter, MD, Medical Director, Emergency Affairs; Mr. Adam Wagner, AIA, Cube 3; and Mr. Jim Bianco, Esquire, Bianco Professional Association came forward to testify at this time. Mr. Dean provided a background on Elliot Hospital and an overview of the proposed project for the Board. Elliot is proposing an outpatient facility called River's Edge approximately 2 miles from its current campus. He stated that all buildings at the hospital were constructed to serve inpatients and the campus no longer serves the needs of the community. He stated that there is an elevated demand for emergency room care, and this project is the most cost effective alternative, as well as avoiding disruption of current services.

Dr. Phelps then stated that scheduling is a problem with inpatient and outpatient services at the same location as there is a need for space between patients to prevent the risk of infections and this project will enhance access for outpatients. Mr. Anagnost and Mr. Wagner reviewed the site plans as well as the development of the property.

Mr. Elwell stated that the cost will be 1/2 to 1/3 of doing the same thing at the hospital. He stated that Elliot will be borrowing \$77 million dollars for this project and contributing \$7 million. Elliot will be refinancing their debt and will meet HSPR's condition to provide an update once refinanced.

Dr. Sochalski asked if no emergency patients would be seen at the facility why an ambulance entrance been included. Mr. Baxter stated that the facility won't accept ambulances but must have an egress for emergency pick-up from the facility. Ms. Roberts asked how services would be billed

and a discussion followed. Mr. Elwell stated that Elliot does not intend to seek “look alike” status from CMS.

The applicant concluded its testimony at 12:00 and Vice Chair Roberts then asked for any public testimony. Mr. Ed Foley from NH Trades Association stated that he sees the community benefit from this project and expressed his support.

With no further testimony the public hearing was closed at 12:11. Vice Chair Roberts then recognized a motion made by Ms. Crory to approve Elliot Hospital AC 07-08 with the conditions as requested by HSPR staff. Dr. Sochalski seconded the motion and this agenda item was unanimously approved.

**6. Elliot Hospital – Request to Amend NSR to Relocate a Fixed MRI from Mammoth Road to Elliot at River’s Edge - \$300,000**

**Discussion:** Vice Chair Roberts asked Ms. Carrier to introduce this agenda item. She stated that in concert with the larger CON application heard as agenda item #5, Elliot Hospital has also submitted a request to amend its NSR for fixed MRI services. She reminded the Board that in 2004 Elliot was granted an NSR to acquire a second fixed MRI unit and locate it at 275 Mammoth Road on property owned by Elliot’s parent, Elliot Health System. Ms. Carrier added that Elliot now seeks to relocate this second unit to the Elliot at River’s Edge, still within the service area claimed by Elliot. In order to maintain a clear public record, HSPR staff recommended to Elliot that it pursue this amendment for the MRI relocation concurrent with its CON application for the River’s Edge project and stated that HSPR staff would recommend that this project remains Not Subject to CON Review.

At this time, Vice Chair Roberts invited representatives from Elliot Hospital to come forward for testimony on this agenda item. Mr. Rick Elwell, CFO for Elliot Hospital, Mr. James Bianco, Esquire, and Mr. Bob Best, Esquire, attorneys for Elliot Hospital came forward. Mr. Elwell stated that there was no new equipment involved and the cost associated with the project is the set up cost only. Dr. Solchalski asked if Mammoth Road was near the Elliot Hospital. Mr. Elwell replied that it was.

Ms. Almeda then made a motion to approve Elliot Hospital’s request to amend their NSR to relocate a fixed MRI from Mammoth Road to Elliot at River’s Edge with a cost of \$300,000. Ms. Wheeler seconded the motion and this agenda item was unanimously approved.

**7. Elliot Hospital – NSR Exemption Request to Relocate Endoscopy Services to Elliot at River’s Edge - \$1,308,779**

**Discussion:** Vice Chair Roberts asked Ms. Carrier to introduce this agenda item as well. She stated that also in keeping with the larger CON application at agenda item #5, Elliot Hospital has submitted a petition for an exemption from review for the establishment of space for Endoscopy services at the River’s Edge facility. Ms. Carrier noted that Endoscopy was originally included with the larger CON application as a relocation, but during Completeness Review this cost was carved out when it was determined that outpatient endoscopy requires licensure as an ambulatory surgery center when provided at a location other than an acute care hospital. She added that as a result, Elliot submitted this request to be evaluated under the cost threshold for an ASC (RSA 151-C:5, II (f) (1)), which relates to the exemption section of the statute, (RSA 151 – C:13, I (f)). She stated that HSPR staff notes that in addition, ASCs are governed separately from any acute care project

and the Endoscopy portion of the project is therefore not part of AC CON 07-08. Ms. Carrier then stated that according to the documentation, total cost associated with the fit up of space is estimated at \$1,308,779, while equipment totals \$550,000, with no single piece exceeding the statutory \$400,000 amount. She finally stated that because the estimated costs fall below the statutory thresholds, HSPR staff concludes that this project is not subject to CON review.

At this time, Vice Chair Roberts invited representatives from Elliot Hospital to come forward for testimony on this agenda item. Mr. Rick Elwell, CFO for Elliot Hospital, Mr. James Bianco, Esquire, and Mr. Bob Best, Esquire, attorneys for Elliot Hospital came forward. Mr. Elwell stated that this is not a new service, it is just relocating to the Elliot at River's Edge. He added that inpatient endoscopy services will be maintained.

After hearing no Board discussion, Vice Chair Roberts recognized a motion made by Ms. Crory to approve Elliot Hospital's NSR request to relocate endoscopy services to Elliot at River's Edge with a cost of \$1,308,779. Ms. Griffin seconded the motion and all Board members voted in favor and this agenda item was unanimously approved.

Chair Vailas rejoined the Board meeting at this time.

#### **8. Other Administrative Business**

- ☐ Ms. Carrier stated that the next meeting of the Board will take place on May 15, 2008.
- ☐ The Long Term Care Subcommittee met on April 16, 2008 and will meet again on May 15, 2008 after the Board Meeting.
- ☐ New copies of the He-Hea 100-300 rules were provided to Board members.
- ☐ Ms. Carrier stated that a hearing on SB 541 was held.

Chair Vailas accepted a motion made by Ms. Roberts to adjourn the meeting. Ms. Griffin seconded the motion. All Board members voted in favor of the motion and the meeting was adjourned at approximately 12:20 p.m.

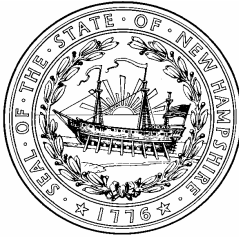
Signature:

\_\_\_\_\_  
Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



May 15, 2008

9:30 a.m.

Board Meeting

Legislative Office Building

Rooms 202-204

33 North State Street

Concord, NH 03301

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**Meeting called by:** Chair Nicholas Vailas      **Note Taker:** HSPR Staff

**Type of meeting:** Certificate of Need - Board Meeting

**Attendees:** Ms. Erin Almeda, Mr. Robert Chase, Ms. Ruth Griffin, Ms. Constance Jones, Dr. Matthew Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz

**Excused:** Ms. Beth Roberts

**Staff Members:** Ms. Cindy Carrier, Ms. Lauren LeBrun, and Mr. Jeffery Peck

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Chair Vailas opened the meeting at 9:31 a.m., and welcomed the newest Board member, Ms. Constance Jones, of Grantham, NH. Ms. Jones replaces Ms. Elizabeth Crory. Ms. Griffin then made a motion that the Board, under the Chair's signature, send a letter of commendation to Ms. Crory for her many years and invaluable input to the Board. Ms. Almeda seconded the motion. All Board members voted in favor of the motion, thereby unanimously approved.

### 1. Consent Agenda

- Approve April 17, 2008 Board Meeting Minutes
- Findings of Fact – Lakes Region General Hospital, AC 07-09, \$51,815,000
- Findings of Fact – Wentworth Douglass Hospital, AC 07-10, \$4,127,796
- Findings of Fact – Elliot Hospital, AC 07-08, \$84,934,300
- Webster at Rye – Amended NSR Petition for Transfer of 19 Beds from Eventide Nursing Home, \$105,862
- Elliot Health System – NSR Petition for Lease of a Medical Office Building in Hooksett, NH, and Related Services, \$422,644
- St. Joseph Hospital – Request for 2 Six-Month Extensions for AC 02-04, \$60,028,358

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if any consent agenda items required any further discussion. If so, it would require removal from the consent agenda.

Ms. Almeda then made a motion to accept the consent agenda. Mr. Wojtkiewicz seconded the motion, and the consent agenda was unanimously approved by all of the Board members.

## **2. Nashua Regional Cancer Center – Replace Radiation Therapy Equipment**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated the Nashua Regional Cancer Center (NRCC), is seeking an NSR determination to replace one of its radiation therapy machines, a 16 year old unit that is now outdated, along with construction of an associated vault to house the unit. According to NRCC, the projected equipment cost of the new unit is \$2,310,118. The cost of the vault is estimated at \$1,699,512. HSPR staff determined this is eligible for an NSR decision under RSA 151-C:5, II(d) because the equipment is substantially similar in nature and will not create a substantial increase in operating costs. Additionally, the cost of the vault is below the statutory threshold.

Representing NRCC were Ms. Barbara Kimball, Executive Director, and Dr. Donald Weiss, of Radiation Oncology Associates and Medical Director of NRCC. Ms. Kimball stated that the project was to replace an old megavoltage therapy unit and add a vault operate it. Ms. Almeda asked as to the disposition of the replaced unit. Dr. Weiss stated that it would be placed into backup status. There were no further Board questions or discussion. Mr. Vailas then accepted a motion from Ms. Almeda that the petition to replace radiation therapy equipment was not subject to CON review because it was substantially similar and that the construction of the vault was below the statutory threshold. Mr. Stanton seconded the motion. All Board members voted in favor of the motion and the project was granted an NSR determination.

## **3. Nashua Regional Cancer Center – Expansion/Renovation \$1,508,892**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that in addition to the equipment replacement that the Board approved as the previous agenda item, NRCC was also seeking an NSR approval for an expansion and renovation plan to non-treatment areas that it considers independent of the replacement. She stated that although the total cost of this renovation project appears to fall below the statutory threshold, HSPR staff was requesting that the Board give some consideration as to whether this might be construed as an integrated project. She continued to state that it was not Staff's intent to penalize NRCC for bringing forward two projects, and that benefits could be derived with the contractor on site at the same time; however, the end result would benefit a single population, those persons needing radiation treatment.

Ms. Barbara Kimball and Dr. Donald Weiss remained at the table to discuss this issue with the Board. Ms. Kimball explained that the project is independent from the equipment replacement and the two are not inter-related. Board discussion ensued relative to the costs between the two projects. Ms. Almeda expressed concern that the Board might be setting a precedent by not finding that the two projects were related. Chair Vailas responded that he did not want to create obstacles for NRCC. Dr. Weiss stated that hiring two contractors would be inefficient for the projects. Ms. Carrier suggested that the issue might be better discussed in the Board's Practice and Procedure Committee for future action, and not necessarily impact NRCC at this juncture.

Ms. Wheeler then made a motion that the NRCC project for expansion and renovation to non-treatment areas in the amount of \$1,508,892 was not subject to CON review. Ms. Griffin seconded the motion. Board discussion ensued on the motion, with concern expressed by Mr. Wojtkiewicz

that the statutory threshold prevents the Board from allowing these types of projects to go forward. Ms. Wheeler agreed that it made common sense not to violate the Board's own rules. Chair Vailas expressed faith in the petitioners not to abuse the process. Ms. Almeda then asked for a clarification on the motion and the previous vote on the equipment replacement. Ms. Carrier stated that the previous vote found the equipment replacement not subject to review under RSA 151-C:5, II(d) and the associated vault construction under the statutory threshold. This vote would be to find this construction also under the threshold. Chair Vailas then called for a vote on the motion. Voting in favor were Mr. Chase, Ms. Griffin, Ms. Jones, Mr. Stanton, Chair Vailas and Ms. Wheeler. Voting against the motion were Ms. Almeda and Mr. Wojtkiewicz. On a vote of 6 to 2 in favor, the motion passed and the project was declared not subject to review.

Dr. Sochalski arrived at the meeting at this time.

#### **4. Northeast Rehabilitation Health Network – Request to Submit a CON Application**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that Northeast Rehabilitation Network, operators of the Northeast Rehabilitation Hospital (NRH) of Salem, NH, have come forward with a letter requesting permission to submit a CON application under the exception to the moratorium on rehabilitation beds established by RSA 151 – C:4, III (a), due to several life safety concerns that have been identified at the facility. Representing NRH were Ms. Susan Palmer-Terry, consultant, and Mr. John Prochilo, President of NRH. Ms. Palmer-Terry reiterated that this was a request for permission to submit an application to renovate due to life safety concerns. She explained that there would be no additional services added, nor would there be any expansion of the facility footprint. Mr. Prochilo added that the facility was 24 years old, and that after such time there can be no more band-aids to rectify the facility.

Board discussion ensued. Ms. Almeda expressed concern that this permission would result in a full facility renovation or replacement. She suggested that the technical assistance meeting be used to specify the cost and details of the proposed project. Chair Vailas responded that this would be borne out in the CON application process. Ms. Palmer-Terry explained that associated renovations would apply, e.g., replacing the floor would necessitate removing walls. Ms. Griffin asked what NRH would do to accommodate clients during the renovation. Mr. Prochilo responded that they have consulted with specialized firms experienced in this type of renovation, and explained that the NRH facility has the capacity to shut down building wings and isolate construction while still operating.

Mr. Wojtkiewicz then made a motion to grant NRH permission to submit a CON application under the exception criteria of RSA 151-C:4. Mr. Chase seconded the motion. All members voted in favor of the motion and the motion was unanimously approved.

#### **5. Determine Issuance of June 1, 2008 Mobile PET RFA**

**Discussion:** Chair Vailas asked Ms. LeBrun to introduce this agenda item. Ms. LeBrun stated that based upon the fact that, to date, no letters of interest have been received, nor any need expressed in support of the RFA, and that the current volumes can be met by the existing vendors, HSPR staff recommends that no RFA be issued effective June 1, 2008 until or unless any request is received by May 29, 2008, which allows sufficient time for posting of the public notice. There was no public testimony in favor of the issuance of the RFA. As such, Chair Vailas recognized a motion by Mr. Wojtkiewicz to not issue the RFA due to the lack of interest expressed, and the staff

evaluation indicating that the current volumes being met by the existing vendors. Ms. Griffin seconded the motion. All Board members voted in favor of the motion, thereby unanimously approving it.

**6. Public Hearing: Elliot One Day Surgery Center, ASC 07-11, \$8,936,643**

**Discussion:** At this time Ms. Carrier performed a swear-in of any persons who might be presenting testimony on this and any remaining agenda items. Chair Vailas then asked Mr. Peck to introduce this agenda item. Mr. Peck stated that at this time, the Board will hear the ambulatory surgical center application proposed by the Elliot One Day Surgery Center (EODSC) to relocate its ASC from the campus of Elliot Hospital to the facility known as the Elliot at River's Edge, recently approved by the Board under CON AC 07-08. He referred to the HSPR Staff Analysis, Checklist and Revised Checklist, and stated that Staff has recommended two conditions to the application, if approved: that the EODSC supply proof of all licenses, accreditation and occupancy pertaining to this application on or before operation of the facility and that any other licenses not identified be separately identified in relation to this proposal, as necessary; and that the EODSC provide a final commitment letter from the lender which includes financed amount, rate of interest and term of debt prior to the commencement of construction. He also referred to a possible error in the Board's ASC rules regarding a written agreement with an EMS provider that he stated could be discussed as part of the public hearing on the rule coming up later in the agenda.

Representing EODSC were Mr. Doug Dean, President and CEO; Ms. Mary Beth Jenkins, RN, Peri-Operative Services; Mr. Richard Phelps, MD, Senior Vice President, Medical Affairs; Mr. Dick Anagnost, President, Anagnost Companies; and Mr. Adam Wagner, AIA, Cube 3. Mr. Dean briefly introduced the project, explaining that the EODSC relocation was essentially a continuation of CON AC 07-08 at the JacPac site. He stated that, for EODSC, this was a new environment of care and related the history of the EODSC's location within the hospital, in the tower originally built by Optima. He stated that there were obvious advantages to keeping the service as freestanding and that the co-location with other outpatient services promoted wellness. Ms. Jenkins spoke to the operational components of EODSC, stating that the facility hosts 7,000 procedures per year, and that this volume was expected to increase to 8,000 by Year 3. She also indicated that the project would be funded by approximately \$1.8 million in equity and \$7.1 million in borrowing, and that there was sufficient revenue to support the cost of the project. Billing was expected to remain the same, as well. She closed by stating that the plan is to provide exceptional care, which cannot be accomplished in space originally intended for cardiac surgery. The current location within the hospital creates confusion with way finding, and parking has also become an issue. Patient perception is diminished and will be restored by the move to a facility intended for outpatients.

Dr. Phelps spoke briefly concerning the load on the main ORs and the need to maintain a Level 2 Trauma Center designation at the hospital. He stated that the main ORs would be more accessible with the move of the EODSC offsite.

Mr. Anagnost provided a handout for the board and highlighted the location of the ASC on the 4<sup>th</sup> floor of the new building with 6 ORs and space for two additional ORs shelled. He stated that this new location makes sense for ventilation and air exchanges, as well as minimizing pass through of other patients from other floors. He stated that the square footage and layout were still being refined, but that the price should not fluctuate.

There was no public testimony on the application. A brief Board discussion followed, with Ms. Almeda inquiring as to the total square footage for the ORs. Mr. Wagner responded that each OR



was planned for 600sf. Ms. Wheeler then made a motion to approve the EODSC application in the amount of \$8,936,643 with conditions as it had met all the requirements of He-Hea 303.02 through He-Hea 303.09, RSA 151-C:7 and He-Hea 1903 and He-Hea 1904. Ms. Griffin seconded the motion. Chair Vailas recused himself from the vote. All other Board members voted in favor of the motion and the project was approved with conditions.

## **7. Public Hearing: He-Hea 600 MRI Rule Amendments and Re-Adoption**

**Discussion:** Chair Vailas opened the public hearing on the amendments and re-adoption of the He-Hea 600 MRI rule. Mr. Philip Katz of Rehab Associates of New England asked for a clarification of He-Hea 601.01(h)(3). Ms. Carrier responded that this change was seeking to ensure that services would be offered in a setting with quality oversight. Offering further amendments was Ms. Lucy Hodder, Esq., representing the Bedford Ambulatory Surgery Center. She also supplied a handout of her recommendations, which included changes to He-Hea 601.01(h)(3) as well by allowing licensed physicians to obtain and operate a fixed unit. These same changes were also suggested for He-Hea 602.02. She explained that the expense of such units would likely result in collaboration rather than MRI services at single practices. She offered a final amendment for He-Hea 605.01 to allow an applicant to show a potential of 1500 referrals to a mobile vendor based on previous or projected volumes.

Board discussion ensued on the proposed changes. Dr. Sochalski questioned how the Board would have oversight of locations owned by physicians. Ms. Hodder responded that any physicians would have to meet all other CON review criteria and requirements. Ms. Wheeler questioned the removal of the term "sole" in He-Hea 601.01(h)(3). Ms. Hodder responded that such services could be co-located with other services. Ms. Almeda questioned the change to allow licensed physicians and noted that this might have to be changed throughout the rule. Attorney John Malmberg, representing himself, suggested from the audience that there should be a protection clause for Critical Access Hospitals (CAH), much like the ASC rule. Ms. Leslie Melby of the NH Hospital Association suggested that the rule could list the CAHs by name. Ms. Almeda noted that for He-Hea 606.01(f)(2) the term "registration" should be used instead of "licensed."

A motion was then made by Dr. Sochalski and seconded by Ms. Almeda to incorporate the changes discussed today into the rule for further review at the next Board meeting. All Board members voted in favor of the motion.

## **8. Public Hearing: He-Hea 1900 ASC Rule Amendments and Re-Adoption**

**Discussion:** Chair Vailas opened the public hearing on the amendments and re-adoption of the He-Hea 1900 ASC rule. Ms. Lucy Hodder, Esq., representing the Bedford Ambulatory Surgery Center, offered further amendments with a handout. Changes were offered to He-Hea 1903.04(b)(1) relative to the need for utilization data, as well as a recommendation to retain the 6-month RFA process. HSPR staff asked the Board to review the requirements of He-Hea 1903.06 (e) and (f) relative to the requirements for a written agreement with an EMS service. Further discussion took place on this issue, with the Board seeking further research on the Medicare requirements and the suggestion of an option for the use of either a written agreement or use of the 911 system. A minor change was also suggested for He-Hea 1904.01(m)(7) to include the street over the lot line. A motion was then made by Dr. Sochalski and seconded by Ms. Almeda to incorporate the changes discussed today into the rule for further review at the next Board meeting. All Board members voted in favor of the motion.

**9. Other Administrative Business**

- ☐ Next meeting of the Board will take place on June 19, 2008.
- ☐ The LTC Subcommittee will meet immediately following the Board meeting.
- ☐ SB541 has been voted into interim study.
- ☐ A copy of the latest rule for LTAC facilities, He-Hea 2100, has been distributed for Board use.

Chair Vailas accepted a motion made by Mr. Wojtkiewicz to adjourn the meeting. Ms. Almeda seconded the motion. All Board members voted in favor of the motion and the meeting was adjourned at approximately 11:25 a.m.

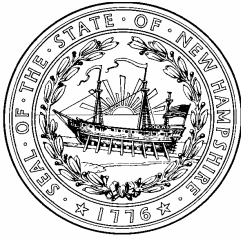
Signature:

\_\_\_\_\_  
Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date

## HEALTH SERVICES PLANNING AND REVIEW



June 19, 2008

9:30 a.m.

Board Meeting

Department of Revenue  
Community Services Division  
Training Room  
57 Regional Drive  
Concord, NH 03301

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<b>Meeting called by:</b>	Chair Nicholas Vailas	<b>Note Taker:</b> HSPR Staff
<b>Type of meeting:</b>	Certificate of Need - Board Meeting	
<b>Attendees:</b>	Ms. Erin Almeda, Ms. Ruth Griffin, Ms. Constance Jones, Dr. Matthew Sochalski, Mr. Jack Stanton, Mr. Nicholas Vailas, Ms. Katherine Wells Wheeler and Mr. Scott Wojtkiewicz	
<b>Excused:</b>	Mr. Robert Chase and Ms. Beth Roberts	
<b>Staff Members:</b>	Ms. Cindy Carrier, Ms. Angel McFetridge and Mr. Jeffery Peck	

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Chair Vailas opened the meeting at 9:30 a.m.

### 1. Consent Agenda

- **Approve May 15, 2008 Board Meeting Minutes**
- **Findings of Fact – Elliot One Day Surgery Center, ASC 07-11, \$8,936,643**
- **Southern NH Medical Center – NSR Request for Facility Renovations for Outpatient Services, Merrimack, NH - \$1,727,256**

**Discussion:** Chair Vailas asked Ms. Carrier to conduct a general swearing-in of audience members planning to testify. He then asked Board members if any consent agenda items required any further discussion. If so, it would require removal from the consent agenda.

Ms. Griffin then made a motion to accept the consent agenda. Ms. Almeda seconded the motion, and the consent agenda was unanimously approved by all of the Board members.

### 2. Determine Issuance of July 1, 2008 Mobile MRI RFA

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the current MRI rule has expired as of May 10, 2008 and the Board is thus prohibited from officially issuing an RFA until the rule is readopted. He referred to the staff evaluation regarding the issuance of this RFA and stated that no letters of intent have been received. He also stated that

some data has yet to be reported by all the providers. Mr. Peck stated that staff recommends that the Board not issue an RFA based on the expiration of the rule and no interest being expressed by potential applicants.

At this time, Chair Vailas recognized a motion made by Mr. Wojtkiewicz to not issue the July 1, 2008 Mobile MRI RFA. Ms. Almeda seconded the motion and this agenda item was unanimously approved by all of the Board members.

**3. Colonial Poplin Nursing Home – NSR Request to Transfer 20 Beds from Exeter Healthcare, \$80,000**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that Colonial Poplin Nursing Home of Fremont, NH submitted an NSR petition for the transfer of 20 beds from Exeter Healthcare to its facility at a cost of \$80,000. She stated that the proposed transfer of beds will occur within the same Long Term Care Region 8, Rockingham County; therefore, there will be no increase of beds to this region. She added that Colonial Poplin already offers long-term care services and will therefore not be developing any new institutional health care services. Ms. Carrier stated that the proposed cost for the transfer falls below the statutory threshold but that the petition does not appear to include any provisions for establishing and operating the beds at Colonial Poplin, only that the beds be transferred. Ms. Carrier informed the Board that the petitioner has been notified that any costs associated with either construction or renovation necessary to bring the beds online will require a separate review by the Board and that Colonial Poplin has been reminded of the nursing home moratorium on projects exceeding the \$1,703,400 threshold.

At this time, Mr. Jeffrey Philbrick, co-owner and Administrator, Colonial Poplin Nursing Home, came forward to provide testimony. Ms. Wheeler questioned how the process started. Mr. Philbrick answered that the process originally began 3 years ago with the certification of beds for Medicaid. He learned that another entity was interested in the Exeter beds but they cancelled their transaction. He added that the entity was Webster at Rye. As such, he found an opportunity to bring some beds online in the area. Ms. Griffin asked how many beds would be left in Exeter. Mr. Peck replied that there would be 89 licensed beds left at Exeter Healthcare upon completion of this transfer.

With no further Board discussion, Ms. Griffin made a motion to approve the NSR request made by Colonial Poplin nursing home to transfer 20 beds from Exeter Healthcare for \$80,000. Mr. Wojtkiewicz seconded the motion and this agenda item was unanimously approved by all of the Board members.

**4. Access Sports Medicine and Orthopaedics, PA, Exeter, NH – NSR Request to Purchase Fixed MRI Extremity Scanner, \$372,000**

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that Access Sports Medicine of Exeter, NH, seeks an NSR determination for the anticipated purchase of an S-Scan Spine MRI system, a fixed MRI extremity scanner. He stated that the estimated cost of this unit is \$372,000 and added that it is logical that the petitioner seek Board approval before actually acquiring the unit, in order to be in compliance with any applicable state law. Mr. Peck stated that although the cost falls below the statutory equipment threshold of \$400,000, HSPR staff

recommends a condition to the NSR, that the petitioner submit a final invoice showing the actual cost of the unit once purchased.

Representing Access Sports Medicine and Orthopaedics, PA was Ms. Pamela Bronson, Practice Manager and Attorney Lucy Hodder. Ms. Hodder gave a brief description of the proposed unit and outlined patient benefits. She stated that the unit is accredited. Ms. Wheeler asked where patients were currently having MRI's done. Ms. Bronson replied that Access Sports Medicine currently has an extremity scanner and stated that the new unit will supplement the existing one. Ms. Griffin asked the cost per scan. Ms. Bronson replied that the price was between \$500 and \$700. Chair Vailas added that the cost is very low, that many places charge \$3,500 and that it is common for orthopaedic practices to have an extremity scanner. Ms. Hodder also added that a signed invoice had been submitted to supplement the request.

Mr. Wojtkiewicz then made a motion to approve the NSR request from Access Sports Medicine and Orthopaedics, PA of Exeter, NH to purchase a fixed MRI extremity scanner for \$372,000. Ms. Wheeler seconded the motion and this agenda item was unanimously approved by all of the Board members.

**5. Elliot Hospital – NSR Request to Acquire Laparoscopic Surgical Equipment via Capital Lease – da Vinci System, \$1,600,000**

**Discussion:** Chair Vailas asked Ms. Carrier to address this agenda item. Ms. Carrier stated that Elliot Hospital seeks to acquire, via capital lease, the da Vinci robot system of laparoscopic surgical equipment with a cost of \$1,600,000. Under GAAP this is considered an equipment purchase. She stated that according to Elliot, however, this equipment is substantially similar to existing equipment pursuant to RSA 151 – C:5, II(d), and therefore no Certificate of Need Review is required. Ms. Carrier referred to the HSPR staff evaluation on this request and stated that HSPR staff doesn't have the expertise to determine whether such equipment is "substantially similar", and requested that the Board make this determination.

Representing Elliot Hospital was Mr. William A. Selleck, MD, Urologist, Mr. Richard Elwell, CFO and attorneys Bob Best and James Bianco from Bianco Professional Association. Attorney Bianco gave a brief introduction and explained the term "substantially similar" for the Board. Dr. Selleck spoke next. He gave some brief background on himself, stating that he is a practicing urologist in Manchester. He described the equipment and stated that the most widespread use for the da Vinci is for removing the prostate gland. Dr. Selleck described the surgical process using traditional laparoscopic surgical equipment versus using the da Vinci system. He stated that there was less pain and a quicker recovery for the patient. Ms. Griffin asked if the scalpal is used to enter the body. Dr. Selleck replied that it was. Ms. Wheeler asked Dr. Selleck if he had used the technology and where. He replied that he had used it at CMC. Mr. Elwell spoke next. He discussed operating costs and referenced the analysis in the petition. He stated that there was an increase of 2.4% in operating costs, which is not considered substantial. He then went over the charges stating that there is no unique charge for using this equipment and that insurance companies pay per case. Chair Vailas asked why Elliot chose a capital lease. Mr. Elwell replied that it was through negotiations with the equipment supplier. Mr. Elwell continued by saying that after 48 months, they will evaluate whether to continue the lease, purchase or replace the equipment.

Hearing no further discussion, Chair Vailas recognized a motion made by member Sochalski to grant an NSR to Elliot Hospital to acquire Laparoscopic Surgical equipment via a capital lease.

Ms. Griffin seconded the motion. All Board members voted in favor of the motion and the motion passed unanimously.

After the vote was taken, Ms. Wheeler stated that the Board has been struggling with the issue of substantially similar equipment and added that she was very comfortable that this is substantially similar.

#### **6. Approve Final Proposal He-Hea 600 MRI rules**

**Discussion:** Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the MRI rule was ready for approval of the final proposal, subject to 3 additional items for change – she referred to the addendum detailing these changes; changing the term “provider owned facilities” to “provider owned entities”; removing He-Hea 605.01 (c), which was added in error; and adding a new paragraph He – Hea 602.01 (e), relative to protection of critical access hospitals. She stated that approval of the rule with these changes would allow the rule to be sent to JLCAR, with a hearing to be held in a month or two.

Ms. Almeda made a motion to adopt the He-Hea 600 MRI rules. Mr. Wojtkiewicz seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

#### **7. Approve Final Proposal He-Hea 1900 ASC rules**

**Discussion:** Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that time has been allotted to review and approve the final proposal of He-Hea 1900 ASC rules that has incorporated testimony heard at the May 15, 2008 public hearing. He added that an approval of this rule will allow it to be scheduled for a hearing before the Joint Legislative Committee on Administrative Rules (JLCAR).

Ms. Almeda made a motion to accept the final proposal He-hea 1900 ASC rules. Mr. Wojtkiewicz seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

#### **8. Other Administrative Business**

- ❑ Next meeting of the Board is scheduled for July 17, 2008. Region 3 and Riverwoods Company hearings will be held that day. Board members rescheduled this date to July 24, 2008.
- ❑ The LTC Subcommittee will meet immediately following the Board meeting.
- ❑ A copy of the physical rehabilitation bed need formula is enclosed for your review. The moratorium prevents any RFA issuance for beds.
- ❑ Key staff will be unavailable for the scheduled August 21, 2008 Board Meeting. We suggest that the Board not meet in August and hold an early September meeting instead. This will be discussed further at the next Board meeting.
- ❑ The Practice and Procedure subcommittee scheduled a meeting for July 1, 2008 at 57 Regional Drive.

Chair Vailas adjourned the meeting at approximately 10:22 a.m.

Signature:

\_\_\_\_\_  
Nicholas Vailas  
HSPR Board Chair

Approved by  
HSPR Board:

\_\_\_\_\_  
Date